



GALLY MAXWELL

One Man's Justice  
Appendices <sup>v2</sup>

William Henry Barber, Solicitor  
and the Will Forgeries Scandal of 1844

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**Cover picture:** *Mansion House, London*, c. 1750, William James (active 1754-1751) (circle of) *Guildhall Art Gallery*. Photo credit: City of London Corporation. From [Mansion House, London, c.1750 | Art UK](#)

## Appendix 1 Joint affidavit of Elizabeth Stewart and Thomas Griffin

[Affidavit sworn on 26 August 1840]<sup>1</sup>

### IN THE PREROGATIVE COURT OF CANTERBURY

In the goods of John Stewart, deceased, appeared personally Elizabeth Stewart, of No. 1 Southampton-terrace, Southampton-street, Camberwell, in the county of Surrey, spinster, and Thomas Griffin, of No. 34, Duke-street, Grosvenor-square, in the county of Middlesex, tailor, and severally made oath as follows:-

And first, this deponent, Elizabeth Stewart, for herself made oath, that she is the natural and lawful sister and only next of kin of John Stewart, late of Great Marlow, in the county of Buckingham, gardener, deceased, who died on the 13th day of March, 1827, a bachelor and intestate without a parent; and in verification of the said relationship to the said deceased this deponent refers to the annexed certificate of baptism. That in the month of June, 1826, this deponent came to England and met her brother, the deceased, at the Bank of England, when he informed her that he had been purchasing some stock; but did not state to this deponent the amount, or in what stock he had invested his money, he being a man of very peculiar and reserved habits. That the deceased was at the time of his death in the service of James Cranborne Strode, Esq. (then residing at Court-garden, Great Marlow), in the capacity of steward and gardener; and the said deceased was interred by direction of the said master, who defrayed the expenses attendant thereon, out of monies remaining in his hands belonging to the said deceased, as this deponent has been informed and believes; and this deponent having been informed that the said deceased had a chest in which he kept all his papers of moment and concern, which was in the custody of the Rev. Tracy Coxwell, the vicar of Great Marlow, has, through her solicitor, made application to him for information relative thereto, in answer to which application her said solicitor received a letter from the said clergyman, stating that he never heard of any will being left by the deceased, or had any papers or other property belonging to the said deceased in his possession. And this deponent further made oath that at her last interview with her brother, he expressed an intention of disposing of his property in England and going to America to purchase a farm and reside there with this deponent; consequently she was constantly in expectation, after her return to New York, of her brother's arrival; and this deponent addressed several letters to him at different periods to England, but without receiving any reply, and it was not until her return to this country, in the month of May last, in consequence of not having heard from her brother for so long a period, that she became acquainted with his death through a friend of her late aunt (Mrs. Elizabeth Stewart) named Jones, who came over from New York to Bristol with this deponent, and having business in London, offered to go to Great Marlow, and convey a letter from this deponent to the deceased, and, on his return, the said Mr. Jones informed this deponent that her said brother died in the month of March, 1827, which, from subsequent inquiries she finds was the fact. And this deponent lastly made oath that her said late aunt (with whom this deponent resided in New York) frequently told her that the said deceased had about £700 in the Bank of England, and also other money which he had lent on mortgage, which this deponent believes to be true. And this deponent, Thomas Griffin, for himself made oath that he knows, and has been well acquainted with Elizabeth Stewart, his fellow deponent, and also with John Stewart (the beforenamed deceased) for 25 years and upwards, and while he (the deceased) was residing at Great Marlow aforesaid; and this deponent knew and understood the said persons to be brother and sister, and has always so heard

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<sup>1</sup> *The Times* (1844) 'The Late Will Forgeries' 23 January 1844.

them speak of and acknowledge each other. And this deponent further made oath, that in or about the month of June, 1826, the deceased, in the course of conversation with his said sister and this deponent, stated that he had then been placing some money in the Bank of England, which he, however, intended shortly to take out again for the purpose of proceeding to America to join his said sister, and then expressed an intention of purchasing a farm, and residing permanently in that country.

[ends]

## Appendix 2 Chronology of Transaction in *Stewart*

Date	Event
May 1840	Fletcher travels to Great Marlow and meets Henry Hyatt and others.
25 June 1840	Fletcher (as George Jones) writes to William Windsor, one of the men he met in Great Marlow.
Approx. July 1840	Susannah Richards moves to Camberwell as Elizabeth Stewart.
July 1840	Fletcher takes Elizabeth Stewart to the proctor, Dr Pott, and sees his clerk, Edmund Keene.
21 July 1840	Elizabeth Stewart swears affidavit in support of application for Letters of Administration, before Dr Robertson.
31 July 1840	Elizabeth Stewart swears affidavit explaining the delay in applying for Letters of Administration.
31 July 1840	Thomas Griffin and one Gregory sign the administration bond.
3 August 1840 and in next week or so	Keene pays the stamp duty and lodges the papers. The application is not accepted – more evidence is needed.
13 August 1840	Dr Pott writes to Elizabeth Stewart advising her to contact the vicar at Great Marlow to check whether he has a Will for John Stewart.
Friday 14 August 1840	Probable date when Fletcher instructed Barber to write to the vicar, Rev. Coxwell.
Sunday 16 August 1840	Rev. Coxwell replies to Barber.
16-25 August 1840	Barber works with Keene to draw up another affidavit.
26 August 1840	Joint affidavit sworn by Elizabeth Stewart and Thomas Griffin.
28 August 1840	Letters of Administration granted.
7 September 1840	Barber writes to James Cranbourne Strode asking for John Stewart's stock receipts.
19 September 1840	Barber meets Mr Edward Thompson of Pickering, Smith & Thompson & Co, solicitors to James Cranborne Strode. At

	this meeting, or the next, on 24 September, Thompson said to Barber: I said, 'Let me see the sister.'
21 September 1840	Mr Pott, the proctor, writes to Barber, responding to his request for copies of the affidavit in support of the application for letters of administration and the baptismal certificates annexed to it. He provides a copy of the affidavit but tells Barber he will need to get copies of the certificates separately.
24 September 1840	Barber again meets with Mr Thompson (probably with his clerk, Andrew Besant, present). He produces a copy of the affidavit but not the certificates.
Thursday 1 October 1840	Barber meets with Besant, who asks to see his client. Barber takes away a list of questions.
Saturday 3 October 1840	Joshua (as E. Stewart) writes to M'Pherson, Session Clerk to the Kirk in Callander.
Wednesday 7 October 1840	M'Pherson replies, declining to change the certificate, but this is not posted until 9 October 1842.
Friday 9 October 1840	Joshua chases a response from M'Pherson to his letter of 3 October, unaware that one is on its way (the letters cross in the post).
Tuesday 13 October 1840	Barber travels to Great Marlow: his and Peckham's evidence.
Thursday 15 October 1840	Date of letter to Chief Accountant at the Bank asking for the stock and arrears.
Friday 16 October 1840	Letter lodged with the Bank.
Thursday 22 October 1840	Barber attends at the Bank with Elizabeth Stewart, later described as being between 40 and 50 years old by Charles Hill, stockbroker.  Bank makes order requested.
Saturday 24 October 1840	Barber attends at the Bank with Elizabeth Stewart, to arrange for stock to be sold through Charles Hill, who confirms that it was the same woman he says two days earlier.
Saturday 31 October 1840	Barber writes to Pickerings – his first contact since 1 October.
Monday 2 November 1840	Pickerings maintain their denial that John Stewart had a sister.
Wednesday 4 November 1840	Barber replies to Pickerings, threatening legal proceedings.



Friday 6 November 1840	Pickerings ask Barber to reply to the questions previously given to him. [He does not reply.]
20 July 1842	After being chased for the unpaid stamp duty, Griffin calls on Joshua who writes immediately to William.

### Appendix 3 Chronology of Transaction in *Slack*

Date	Event
1806	Ann Slack born, in May
1815	<p>Ann's father George Slack dies. Mr Arderne Hulme of banking house Jones Lloyd &amp; Co appointed as executor.</p> <p>Mr Hulme transferred the £6,600 and £3,500 Consols into Miss Slack's name. She was only aware of the £6,600 relying on Mr Hulme to provide money when she needed it.</p>
29 October 1829	<p>Arderne Hulme invests £6,600 and £3,500 in Ann Slack's name with Bank of England.</p> <p>George Slack's estate completed.</p> <p>Ann living with Mrs Leek in Smith Street, Chelsea</p>
5 January 1830	Ann grants Hulme power of attorney regarding her £3,500 in the 3% Consols.
13 March 1830	Ann grants Hulme power of attorney regarding her £6,629 17s in the Reduced 3% Annuities.
1830	Ann leaves Smith Street, Chelsea and goes to live with the Fosketts in Abbots Langley.
5 July 1832	Ann's stock is transferred to the Commissioners.
17 July 1832	Mr Hulme buried. Miss Slack decides to receive her dividends direct but is only aware of the £6,600.
June 1842, approx.	Sanders says Fletcher approached him about Slack.
1 August 1842	Sanders registers fake death of Anne Slack at Bath.
Late September 1842	Fletcher and Sanders go to King's Langley.
3 October 1842	Barber instructed by Fletcher.
4 October 1842	Barber writes to Captain Foscett.
13 October 1842	Foscett replies confirming that Ann resides with him and her sister.

25 Oct 1842	Barber writes to Foskett, mentioning the registration of the death of an Anne Slack in Bath.
21 November 1842	Barber meets with Foskett and says 'Forty will do.'
28 Nov 1842	<p>Barber writes to Foskett: 'Re Ann Slack, deceased.</p> <p>Sir, - it would probably facilitate our inquiries if you could oblige us with the names of the trustees holding funded property for the benefit of Miss Ann Slack. Requesting the favour of your early attention.</p> <p>Foskett ignores him.</p>
12 Dec 1842	<p>Barber writes to Foskett again, asking for an example signature:</p> <p>'Dear Sir,</p> <p>In reference to our last letter some explanation of the object of the inquiry which it contained may be necessary. It appears that the lady entitled to the property in question was possessed of a small portion of stock in the public funds, and it would materially assist us in ascertaining the identity if you would acquaint us with the names of her trustees. If you could at the same time <b>favour us with her signature</b>, we think it would enable us at once to determine whether it is really her property or that of another party. If you are likely to be in town in a few days, we should feel obliged by the favour of a call. We are desirous, for the sake of all parties, of clearing up the point with the least possible delay.</p> <p>We remain, &amp;c.</p> <p>BARBER and BIRCHAM'</p>
4 Jan 1843	<p>Barber and Bircham write:</p> <p>"28, Bridge-street, Blackfriars, 4th Jan. 1843.</p> <p>Dear Sirs,—We beg to return Miss Slack's letter, and to state that we find the signatures do not correspond; and, consequently, we have arrived at the conclusion, that the identity cannot be supported. We trust you will be good enough to <b>consider this negotiation confidential</b>, and <b>should our exertions to discover the right party prove successful, we shall not fail to communicate to you the result</b>, for the satisfaction of the young lady and her friends.</p> <p>(Signed) BARBER and BIRCHAM.</p>
January to February 1843	Fletcher triggers the Bath story. He advertises in Bath and Jane Slack responds on 19 January. But he discovers that the registration by Sanders in Bath is flawed, the surname being Stock.

	<p>He sends Lydia to Bath to persuade the registrar to change this. She takes Georgiana with her. The registrar refuses without seeing the man who reported the death: Sanders.</p> <p>Fletcher wants Sanders to go to Bath to fix this but he refuses.</p> <p>Fletcher re-groups and sets up a different back-story: Anne Slack of Pimlico.</p>
25 Feb 1843	Fletcher, posing as ROBERT HART, purports to register the death of Anne Slack supposedly occurring on 17 February 1843, from gout.
March 1843	Advertisement in <i>The Times</i> re Ann Slack: a solicitor, George Coffey, responds, referring to the real Miss Slack.
9 March 1843	Lydia takes lodgings as 'Miss Slack' and is called such by Mrs Dorey, until 7 April 1843. She has false light ringlets.
16 March 1843	JOHN WILLS: 'I am a proctor in Doctors' Commons. I am acquainted with Mr. Barber—on the 16th of March, he called on me, in company with a female—she was a stranger to me—this entry, in my diary is my hand-writing—the female went by the name of Emma Slack...'
24 March 1843	'(This document was as follows:—"To the Governor of the Bank of England. Sir,—There was lately standing in the name of Anne Slack, of Chelsea, spinster, the sum of 3500l., in the Three per Cent Consolidated Bank Annuities. From the period which has elapsed since any dividends have been received, it is possible that the amount may have been carried to the Commissioners for the Reduction of the National Debt. My aunt died on the 17th day of February last, leaving me her sole legatee and executrix. I have since proved the will, the probate whereof has been duly lodged in the Will-office of the Bank, and I shall therefore be glad to have the stock in question transferred into my name. Dated this 24th day of March, 1843. EMMA SLACK, sole legatee and executrix of the deceased Anne Slack, No. 7, Francis-street, Tottenham-court-road."
27 March 1843	JOHN WELDON. 'I am clerk in the Will-office in the Bank. I produce the Will-taking-in book—on the 27th of March, 1843, probate of the will of Ann Slack was left at the Bank—I cannot say by whom it was left—this letter addressed to the Governor of the Bank was left at the Bank, most likely the day following—I cannot say precisely the day, whether it was that day or the day following—it was left at the Will-office at

	the Bank—the probate was registered at the Bank on the 31st of March—this letter is an application for the re-transfer of the stock—the probate appears to have been returned on the same day, the 31st, to N. B.’ Bircham.
3 April 1843	Fletcher tells Barber and Bircham that the Bank has marked the accounts of ‘Anne Slack’ and Ann Slack as deceased.
7 April 1843	Barber and Sanders (as ‘Emma Slack’) attend at the Bank of England to collect the dividend money.
Early November 1843	<p>‘when the agents for Anne Slack called to collect the November dividend on her holding of some £6,000 in the reduced 3%’s, they were told that she was dead. Unfortunate because, as the Bank very soon found out, Anne Slack was alive and well and living in rural Hertfordshire. Investigations disclosed that the will and probate of Anne Slack of that address had indeed been presented a few months before in order to recover from the Commissioners for the Reduction of the National Debt some £3,500 3% consols (plus interest) and transfer them to her niece Emma. That will was evidently a forgery, the Bank had been embarrassingly duped...’</p> <p>NOT TRUE – according to Francis, it was the broker’s attempt to buy more stock which alerted him and the Bank.</p>
15 November 1843	James Freshfield attends at Barber’s office.
9 December 1843	Barber arrested.

## **Appendix 4 Wills of Burchard, Hunt and Slack**

### **Will of 'Eliza Burchard' 14 October 1825**

In the Name of God Amen I Eliza Burchard spinster formerly of Cooper Street Westminster in the county of Middlesex and late of Rostock Mecklenburgh [sic] in Germany but now of New Bond Street Bath in the county of Somerset being of sound mind and memory and understanding do make this my last Will and Testament [illegible] following I give and bequeath unto my niece Eliza Burchard who is now living with me the sum of seven hundred pounds Stock in the three and a half per cents reduced annuities also three hundred pounds stock in the consolidated three per cent annuities both standing in my name in the Books of the Governor and Company of the Bank of England in London I also give devise and bequeath unto her my aforesaid niece all my money securities for money goods chattels estate and effects of what nature or kind soever and wheresoever the same shall be situate at the time of my death and I do nominate and [illegible] and appoint my said niece sole Executrix of this my last Will and Testament hereby revoking and making void all and every other will or wills at any time heretofore by me made and do declare this to be my last Will and Testament in witness whereof I the said Eliza Burchard have hereunto set my hand and seal this 14<sup>th</sup> day of October in the year of our Lord one thousand eight hundred and twenty five – ELIZA BURCHARD – signed and sealed by the above named Eliza Burchard the testatrix in the presence of us present at the same time who have hereunto subscribed our names as witnesses in the presence of the said Eliza Burchard and of each other – Amelia Rieslie – W. Sanders

### **Will of 'Mary Hunt' 14 November 1829**

I Mary Hunt widow formerly of Bristol and afterwards of Bath but of Spring Street London being of sound mind memory and understanding but in bad health do make this my last Will and Testament as follows whereas I am possessed of about twelve hundred and ten pounds in the three per cent consolidated annuities in the Bank of England this I give devise and bequeath unto my beloved Grandson Thomas Hunt mariner also all my money securities for money goods chattels estate and effects of every kind wheresoever the same shall be found at the time of my death and I also make and appoint my said Grandson Thomas Hunt sole executor of this my last Will and Testament hereby revoking and making void all and every other Will or Wills at any time heretofore made by me and do declare this to be my last Will and Testament in Witness whereof I the said Mary Hunt have hereto set my hand and seal this 14<sup>th</sup> day of November in the year of our Lord one thousand eight hundred and twenty nine. [Signed Mary Hunt]

### **Will of 'Anne Slack' 3 June 1842**

I, ANNE SLACK Spinster formerly of Smith Street Chelsea but now of South Terrace Pimlico do make this my last Will and Testament as follows that is to say I give devise and bequeath unto my beloved Niece Emma Slack the sum of three thousand five hundred pounds sterling in the three per cent consolidated annuities now standing in my name in the Books of the Bank of England and also all my money and securities for money of what nature or kind soever and



wheresoever the same shall be at the time of my death and I do appoint and constitute my said niece sole executrix of this my last Will and Testament hereby revoking and making void all and every other will or wills at any time heretofore made by me and do declare this to be my last Will and Testament In Witness whereof I the said Anne Slack have hereunto set my hand and seal this third day of June in the year of our Lord one thousand eight hundred and forty two —Anne Slack — Signed and sealed by the above named Anne Slack as and for her my last Will and Testament in the presence of us who at her request and in her presence have subscribed our names as witnesses thereto — Jane Perkins — Willm Williams

PROVED at London 22nd March 1843 ...

## Appendix 5 Confession of Georgiana Dorey

[Georgiana's confession was published in two parts, which have been combined here.]<sup>2</sup>

It is now about fourteen or fifteen years since I first became acquainted with the prisoner Fletcher, who was then living in the London-road, and practising as a surgeon, having a chemist's shop there; I was then residing in Portland-street; I cannot speak with certainty of my age; to the best of my belief, I was about eighteen or twenty; both Fletcher and his wife expressed a great partiality for me, and I became a frequent visitor at their house.

They introduced me to a Mr. Stokes; and represented him as a gentleman holding a situation in the Bank of England. Some time after my intimacy at Fletcher's, Mr. Fletcher and Stokes solicited me to go to the Bank; they said, if I would only sign my name and address for them as a bondswoman, they would and did give me £50; I wrote more than signing my names and went to the Bank, I think more than once, with them both, and to the Commons'; I did not understand the business at all; Fletcher and Stokes took the money in their possession, that was paid at the Bank, and afterwards went to an inn, with a Mr. Pizey, (or Pizley,) who acted with them at the Bank, Mrs. Fletcher, and myself; after a long conversation between Fletcher, Stokes, and Pizey, the latter left us; we then got into a coach, and returned to Mr. Fletcher's residence, in the London-road.

I gave the money I received from them, to my mother; I was at that time living with her, also my sister Mrs. Saunders, and her husband; neither of them knew that I had any money at all given to me by Fletcher; I remained on terms of friendship with Fletchers, for some time; I cannot speak of dates with any certainty, but I know it continued up to the first Christmas following the trial Mr. Fletcher induced me to enter against Mr. Taylor, for breach of promise of marriage.

[*Stewart*]

After exchanging visits with them, Mr. and Mrs. Fletcher said to my mother and myself, they could do much better for us than my being in the Pantheon. On our inquiring how, they said that Mr. Fletcher had a friend in the Bank of England that enabled him to get money, and he could get some for us; we again asked, in what manner, but they did not explain, beyond Mr. Fletcher observing to my mother, that if she would place herself under his instruction and direction, he would do well for her, and asked her if she would do as he wished in, every thing; she said she would, after Fletcher saying he would guarantee that she should do nothing but what was right; Fletcher, after this, explained what he meant by saying there were a great many sums of money in the Bank of England without any claimants, which was in the hands of the Commissioners, and as there were no relatives left to claim it, it belonged as much to the public as to them, therefore he would represent her as a relation to some person deceased, who had left money unclaimed, and one of the clerks, who stood high in the Bank, would supply him with all the information requisite to take the money; Fletcher then mentioned the name of Stewart, and said, that a man of that name had been dead some years, and left a sum of money, which by my mother being represented as Stewart's relation, could be easily obtained, but that she must place herself entirely under his direction, and leave her home for a short time to go to a lodging which he would prepare for her; my mother assented, and promised to do as Fletcher directed.

He asked, if I knew of any friend that would take care of any letters that might come through the post, directed to a Mr. Jones; I mentioned Miss Hawkes, and afterwards asked her, if she would take care of such letters, if directed to her care; she said she would, and the letters she brought to

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<sup>2</sup> OB1 and *The Times* (1844) 'The Will Forgeries. Confession of Mrs. Dorey' 20 May.

me, I gave, unopened, to Mr. Fletcher; I do not, or ever did know, their contents; I went to the Bank of England with Mr. and Mrs. Fletcher; Mrs. Fletcher waited with me in the Rotunda, while Mr. Fletcher went to look for his friend; whilst he was gone, the gentleman passed us; when Mr. Fletcher returned, Mrs. Fletcher told him Mr. Christmas had passed us, and we pointed to the office he went in; Fletcher went after him; after being absent some time, he returned, and we left the Bank together, Fletcher observing, I might be sure the gentleman I had seen would not risk the high situation he held, by giving information for him (Fletcher) to act on, if it were not legal.

Fletcher took a lodging for my mother, at a shop in Southampton-place, (or terrace) Camberwell, in the name of Stewart, and my mother went and lived there in such name, and I, by Fletcher's direction, visited my mother as her niece. He said, he would not do any thing for me, if I did not give up my business in the Pantheon; that if I would do so, he would establish me, with his daughter, in some first-rate business at the West-end; I consulted with my mother about it, and she thought it best for me to do as he wished; therefore, I disposed of my stock in the best manner I could, and quitted the Pantheon, relying solely on Mr. Fletcher's promise of doing better for me.

To revert to my mother's case, Fletcher expressed his regret at not having a person at command, who would say, that he or she had for a considerable time known my mother as Miss Stewart, and sister to the deceased, and, in other respects, to establish my mother's identity as such; on my asking him how he did not know of such a person, he said the fact was, he had employed all the persons he could in that way; that during the period of our not being on friendly terms, he had two rich cases, in one of which he was the principal, and, in the other, he had only a share, but that he realized a large sum of money by them; that a man named Briggs, and his wife, were the parties employed to take the cases; Fletcher said he had taken lodgings for Mary Briggs the wife, and mentioned those cases, to assure my mother that she was not endangering herself in any way.

On my mother saying to Fletcher she knew a poor man, a tailor, that was much reduced in circumstances; he said, tell him you will give him 10*l.* to identify you as Miss Stewart, and sister to the deceased Stewart. He (Fletcher) wrote out an account for my mother, to make herself perfectly acquainted with, and desired her to give it to Griffin after she had done so, that he might know what to say as to the particulars of the matter; at the same time, he said, she was to strongly impress on the mind of Griffin a belief, that Stewart was my mother's family name.

Mr. Griffin lived in Duke-street, Grosvenor-square; my mother subsequently saw Griffin, the man now in custody on this charge, and made the proposition to him, which he accepted; she told Fletcher, that Griffin was quite willing to the proposal; he (Fletcher) then said, that was all he required, as Mr. Barber and himself would manage all the rest; I cannot say how long the case was in hand; Fletcher was fearful my mother would not live to go through the business; he took her medicine nearly every morning; she was then seventy-one or seventy-two years of age; I do not know of any other inquiries made, respecting the case, but those I have stated.

The money was obtained, and Fletcher gave my mother between £400 and £500 for her trouble; I heard nothing further of the matter, except that the legacy duty was not paid, although it had been invested in the hands of Barber, the solicitor, to do so at the time. An official communication was made to Griffin, some time after, from Somerset House, upon which he came to me to know what to do; I said he had better take it to Barber, the solicitor; I gave him half-a-sovereign for his loss of time.

Previous to my mother quitting the lodgings at Camberwell, Mr. Fletcher said he should not consent to my mother's returning again to Rathbone-place; therefore, much against her inclination and my own, I took a lodging in Tottenham-court-road; I do not recollect the number; it was a

carver and gilder's shop, on the right-hand side of the road from Oxford-street; I am the only person that visited her, while she remained there; she was so unhappy, I told Fletcher I should have her home; he reluctantly consented, after she had been there about a fortnight or three weeks.

In Stewart's business, I gave to Mr. Griffin ten sovereigns; I took them to his lodging in Duke-street, and gave them into his own hand; five from Fletcher, and five from my mother. Soon after this, I removed from Rathbone-place, to live in Tottenham-court-road; the Fletchers were then living in Southampton-place, Camberwell; I spent much time with them; he was our only friend and adviser; he frequently said he interested himself as much in my welfare as he could do for his own daughter.

[*Burchard*]

About this time I went with Fletcher and his wife to the Bank of England. Fletcher went there to see his friend, and while we were in the rotunda Mr. Christmas passed us, and stopped to speak to Fletcher a moment. Fletcher left to go and have some conversation with him, and after Fletcher returned to us, said that Mr. Christmas and himself avoided as much as possible being seen conversing together. I asked him why? He replied, he did not wish persons employed in the Bank of England to know from whom he got information.

Soon after this Fletcher said, from the information he had received from his friend, he thought he could do some good for me, provided I would do as he instructed me. After some conversation with him, I said I would do so.

Soon after this I was living in Dean-street. He brought a will of Eliza Burchard, of Westminster, and several other places, written by himself, and wished me to copy it. I did so. There was only one name written on it. He told me to disguise my hand, and write closer than usual, or I should not have room. He brought some ink of a peculiar description, in a small phial, to write it with, and also a strip of paper, with the name 'Eliza Burchard' written upon it. Fletcher said he had received it that same morning from his friend in the Bank of England, and that he (the clerk) had copied it from the original handwriting of the deceased in the Bank books, and to which it bore as close a resemblance as possible.

After I copied the will, Fletcher in my presence made a fac simile of the same handwriting as that sent to him on the slip of paper by the Bank clerk, in the foot of the will, observing, that it was what he should do to the will would render it useful, not what I had done.

In thinking deeply on past occurrences since I related them to my solicitor, I perfectly recollect that Fletcher made an impression on the will, with, I think, red wax, and probably with my seal, at the same time he wrote the names of Eliza Burchard and William Saunders. He took it away with him, and would not stop to dine with me, because he wished to be in time to show it to Barber the same day.

I expostulated with Fletcher for writing the name of William Saunders, that being the name of my brother-in-law. He assured me nothing could ever come of it, and said he intended to see William Saunders and talk to him, for he was quite sure that, he could do better for him than he would be able to do in his own business.

Fletcher said I must take a lodging, and told me what I should say to the landlady in case she should require a reference. I was to say my name was Eliza Burchard, and that I had come from the country to stay a short time in London, and that if she pleased I would pay her rent in advance. I was also to say that I had friends living a short distance out of town, perhaps I should

not sleep often at the lodging, but if any letters were brought she was to be particular in taking care of them. I accordingly took a lodging in Great Russell street, Bloomsbury, consisting of one back room on the first floor, for which I paid 8s. or 10s. per week. I only slept there one night.

I was disguised when I took [t]he lodging, therefore, I do not think that the person I took it from would be able to identify me. It was Fletcher's wish that I should disguise myself. He said he had a particular reason for my so doing, which he would hereafter make me acquainted with; for the present, I was to leave it to him. He bought me a pair of spectacles, and desired me to wear a light hair front, with curls, so as to conceal my face as much possible, and to represent an old maid; and I did in all things as directed.

Some few days after I had taken the lodging I went to Fletcher's house in Southampton-place. My mother was at this time alarmingly ill; I was in a dreadful fright about fulfilling the promise I had made to him, and I was very uneasy in consequence of having to disguise myself. On expressing my alarm to Fletcher, and my anxiety to do nothing more in the matter, he assured me all was right; that he had heard from his friend in the Bank. He showed me a note he had received from him, on which there was a good deal of figuring. I saw the name of Christmas written at the foot of the note.

Fletcher also showed me an unclaimed dividend book, in which several names were written against in [sic] the margin; he said his friend in the Bank had marked them as 'dead' cases. I asked him what that meant. He replied, 'They are dead law, and are the cases we seek.' Here he mentioned the names of -----, -----, and -----, who he said transacted business in the Bank in the same way he did.

Fletcher said there was no law to prevent individuals having the money if they knew how to proceed to get it, and that if any obstable [sic] was thrown his way, I should see that he would immediately carry it into the Court of Chancery. He here observed that he had done so in one case; that objection had been raised to his obtaining the money, but they were afterwards obliged to give it up. After this information I acted with confidence.

Fletcher told me he had shown the will to Barber, who said it was all right. As the time drew near when I was to go to the Bank, Fletcher said I must be identified. I asked, 'Are you going to identify me?' He replied, no; he should not be seen with me, but that Mr. Barber would do all that might be required; he knew all about the business; therefore he would answer all questions.

Mr. Fletcher then gave me Barber's address, and said he would take me to him on the following morning. He told me to disguise myself as I had done before, and to get into an omnibus that would put me down at the corner of Farringdon-street about eleven o'clock. I did so, and passed Fletcher, who was waiting for me, several times, and he did not recognise me until I went up and spoke him, and he then took me to Barber's office in Bridge-street. Fletcher introduced me to Barber as Miss Burchard, and I sat down in the office for some time.

Fletcher and Barber, after conversing, left the office together, and after a short time both returned. After a few minutes Fletcher left and Barber took me to a proctor in Doctors' Commons, where the will of Eliza Burchard was produced, to the best my recollection, by Barber.

The proctor, on reading the will, observed that it must have been a clever woman to write it. Barber replied, 'Oh, copied, copied, I dare say.' I was then taken before some gentlemen, and had to make an affidavit. I was not aware should have to so before I went. Some questions were asked, and Mr. Barber answered them all.

I returned with Mr. Barber to his office. He said should want me again, and would write to let me know when. Fletcher and Barber seemed to understand each other very well, and it was quite obvious that all the papers it was necessary to have were in readiness before my arrival Barber's office.

I went subsequently to the Bank of England with Mr Barber, and wrote the name Eliza Burchard in several books. Barber identified me as Miss Burchard. He was the only person who accompanied me, either to the Commons or the Bank, through the whole business. The money was obtained. It was paid over in my assumed name of Eliza Burchard to Barber. I cannot say what he did with the money. When I received it from him, Fletcher was waiting for me. I gave him the money, and he went to my house with me. He had pen and ink and made calculation what he considered due to me after deducting the expenses, and 5 per cent, for the Bank clerk, he gave me between £600 and £700, which said was half the sum left. The other half he said was his.

Barber's account was made out at the time he paid the money. Fletcher previously told me to pay Barber, and give him £5 more than the amount of his bill, for hastening the business. I acted on everything as Fletcher directed me. A few days after the settlement, Fletcher told me that Barber had kept more money than was sufficient to pay the duty, and as it was proposed that Mrs. Fletcher should accompany me to Bristol, Fletcher said I had better write to Barber from there about it, which I did, and he (Barber) remitted the difference of amount by post-office order. It was about £4. I gave Fletcher two sovereigns.

I have never had any communication with Barber since, nor ever seen him until I was at the Mansion-house. I think it was previously to my going to Bristol Fletcher changed some bank-notes for me at the Bank of England, and brought me gold for them in a small canvass bag. He brought it to me on London bridge, where I was waiting for him. I put the money into my own bag, with some sovereigns I had in it, and took it all to the London and Westminster Bank, near the bridge, where I invested it in my own name. The money was in a velvet bag, and the clerk observed it was not many ladies' bags were so rich. I cannot speak with accuracy as to dates, but to the best of my recollection this occurred three years ago.

I afterwards withdrew the money from the London and Westminster Bank, and placed it in the Bank of England, where I had previously purchased stock to the amount of £350 in the New Three-and-a Half per Cent. Reduced Annuities.

Philpots was the name of the broker employed by me. Fletcher introduced me to him.

[*Cole and Blake?*]

Some time after my mother's death my sister from Bristol visited me while I was living in Dean street. She visited the Fletchers, for, think, the first time. Mr. Fletcher came to my lodgings to see her, and, at his request, I took a lodging in Museum-street for a Miss Cole. He said she was a lady coming from the country that he was going to do business for at the Bank. I was to charge particularly the person who let me the lodgings to be careful of all letters that might be brought there for Miss Cole. The same day I took the lodging my sister and myself met Fletcher by appointment, in St. Paul's Churchyard. We went into an office near there, where I signed the name of Jane Blake, according as Fletcher told me do. I do not remember or not whether my sister wrote. This is all, to the best of my recollection, that I know or did know concerning anything that might have been done.



[Joshua's attraction to Georgiana]

Some time after this, Fletcher having observed that a young gentleman was paying his addresses to me, spoke to me on the subject. Mrs. Fletcher had then been dead some thirteen months. Three months after her decease he intimated a partiality he felt for me, and had for many years. Soon after this he met the gentleman he was fearful I liked at my house, and the following day wrote me a strong letter on the subject (I having told Fletcher previously that the gentleman was only a friend, and that I was anxious to retain his friendship, as we had known each other for many years, and he had been a favorite of my mother's), in which letter he said it was useless for me to say the gentleman in question, whom he saw at my house, was only friend, for it was well known that when a young gentleman frequently visits a young lady, it must for some purpose either honorable or dishonorable. If the first, why did I deny it? If the second, the sooner such visits were discontinued the better.

I mention here the contents of this letter sent to me by Fletcher, because I gave it to three or four acquaintances to read, and it being sealed with the same impression as that found by Forrester at my house, they might probably remember it. The letter, with others, I unfortunately destroyed previous to my marriage with Mr. Dorey.

During the time my sister was in business at the Pantheon, Mrs. Fletcher went with me to see her there, and purchased two seals precisely the same. She kept one herself, and gave the other to me. Fletcher was at variance with me because I expressed such indignance at the letter he had sent me.

Some time after this my brother-in-law, Mr. Saunders, came from Bristol; he was angry with me for refusing to accept Mr. Fletcher. Mr. Saunders visited Fletcher, and talked to him the subject, saying it was injudicious of him to propose to me when I was so grievously afflicted by the loss of my mother, and he having so recently lost his wife; therefore Fletcher came again to see me.

[Will of Mary Hunt]

It must have been about this time that Mr. Saunders said he should like see Miss -----, an acquaintance mine. He saw her two three times, and talked to her. He did not sleep at my house, as was his usual custom, but was lodging near Hungerford market.

I met him one day, and he told me was thinking of calling on Miss -----, to get her sign the paper he had in his hand. I looked at it and found it to be the will of Mary Hunt. I talked to Miss ----- about the gentleman, my friend (meaning Fletcher), and said it was very likely he might be able to get some money for her.

She signed the will. I took it after she had done so, and looked at what she had written, and commented on her not having written her own name, but that of 'Mary Hunt.' She replied, she dared say that would do as well. I returned it again to Saunders, and never heard anything more about it.

What I state here is all the knowledge I have, or ever had, in the matter.

[Fletcher renews his suit]

I lent Mr. Saunders £40 or £50 when he first came up from Bristol, and he repaid me before he went home. Both he and Fletcher were angry with me, therefore they were not communicative with me as to what they were doing.

Fletcher again urged his suit, and I repulsed him; upon which he said he must know, once for all, whether I would receive him as my future husband or not. On my determined refusal of him, he

said he would never again be on terms of friendship with me, nor give me his advice as he had hitherto done.

From that time up to January, 1843, I neither saw nor heard anything of him, only that he was married, and had visited Mr. and Mrs. Saunders at Bristol.

[Slack]

I was married to Mr. Dorey in the month of February following, and lived at 45, Oxford-street. At that time my sister was visiting me. I think about March (I cannot speak with certainty to the exact time) Mr. Fletcher called at my residence to see my sister. He came, I think, twice. On one occasion of his coming, I remained in the room with him and my sister some minutes.

He said to my sister, I hope you will soon get it done.'

My sister replied, 'She did not know what to do about it, as she was such a bad hand at writing.'

Fletcher said,' Perhaps your sister will do it for you.'

I asked what it was, and he said, 'Some writing.'

I immediately replied, 'I would do all she required,' and then left the room.

The same evening my sister gave me a will that Fletcher had brought her, written his own handwriting, and asked me to copy it, which I did, and signed one name as Fletcher had written it.

I then took a lodging in Francis street for Miss Slack. I do not know what other proceedings were taken in the matter, because my sister was fearful I should relate anything about it to Mr. Dorey.<sup>3</sup> She did not tell me anything about it.

On one occasion of Mr. Fletcher visiting my sister at my house in Oxford street I heard him say to her she must lose no time in going to Bath. She said to my husband she had occasion to go there on business, but would return to town again, and that she would pay my expenses if he had no objection for me go with her. He assented, and we went.

We slept in Bath one night, and the following morning called at two offices, one near the York-house and the other near the Abbey Churchyard. My sister inquired something about a register, but I cannot tell what, after she had remained in the lodging in Francis street some time.

She returned home with me, and one morning she gave me a thousand pound note to look at. It was the first I had ever seen, I took it into the shop to show Mr. Dorey, and afterwards returned it to her again.

Soon afterwards my sister returned to Bristol, and I heard nothing more of the matter until I saw by the newspapers that Fletcher and Barber were in custody. I should immediately have given to the prosecutors all the information I knew (had it not been that my sister was implicated, and suffering under severe illness), I felt so assured that Fletcher had nearly all through my life been playing on my credulity.

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<sup>3</sup> It is not clear why Lydia Sanders would be concerned about her brother-in-law in particular being told, but no doubt it was simply a concern to keep the secret tight. Her own husband was of course heavily involved.

I have, in this statement, given an account of all the money that I ever received for what I did for Fletcher, or any one connected with him.

I know nothing more of his transactions, or anything of moment relating him, other than a relation called on me in Oxford-street a few days previous to my being apprehended by Forrester, and told me that he came by Fletcher's wish to inform me that the officer was coming to examine me. He also said that Fletcher had been getting plenty of money, for he had within the last day two made over property to the amount £9,000 or £10,000, belonging to Fletcher, and if Fletcher was sentenced to transportation he should not be sent out of the country, for he would provide him with some prussic acid.

I have never in my life given the least information to any individual regarding Fletcher's transactions, or what I had done from his advice. Mr Dorey (my husband) was perfectly ignorant of all my transactions up to the moment of Forrester taking me.

GEORGINA DOREY.

Giltspur-street prison, Feb. 28.

My mother's name was Susannah Combs.

## Appendix 6 OB1, transcript of *Stewart* trial

### The Queen v William Henry Barber, Joshua Fletcher, Georgiana Dorey<sup>4</sup>

Old Bailey reference number: t18440408-1058

[11 April 1844]

1058. WILLIAM HENRY BARBER, JOSHUA FLETCHER, and GEORGINA DOREY, were indicted for feloniously inciting one Susannah Richards, now deceased, to forge a certain administration bond, with intent to defraud the Archbishop of Canterbury.

2nd COUNT, stating their intent to be to defraud the Right Hon. Charles Shaw Lefevre, and others, Commissioners for the Reduction of the National Debt.

Other COUNTS varying the manner of stating the charge.

MR. ATTORNEY-GENERAL, with MESSRS. CLARKSON, BODKIN, SIR JOHN BAYLEY, conducted the Prosecution.

**JOHN WILLIAM SEATON.** I am a clerk in the Prerogative-office, Doctors Commons. I produce a warrant for taking the act of administration granted to Elizabeth Stewart, the bond that was executed on that occasion, an affidavit annexed to certain certificates of baptism, and a copy of affidavit. The original, according to the regulations of the office, would be at Somerset House.

**GEORGE BENNETT**, clerk in the Stamp-office, here produced an affidavit.

**JOHN ELLIOTT PAISLEY ROBERTSON, D.C.L.** I am a surrogate of the Prerogative Court. The parties purporting to be the persons named in these documents, were sworn in my presence. my signature is to this affidavit of Elizabeth Stewart and Thomas Griffin, dated 26th Aug, 1840. This affidavit, dated 31st July, 1840, was sworn before me, purporting to be the affidavit of Elizabeth Stewart. Here is the warrant of the amount of property sworn to, which the affidavit of the 31st of July refers to. The warrant is dated the same day. The jurat is signed by me. I administered the oath to the person who swore that affidavit. This warrant is signed by me. It is dated 31st of July.

**Cross-examined by MR. GREAVES.**

Q. Are the affidavits explained to the parties in your presence?

A. Not in the presence of the surrogate. The parties depose before me that the names subscribed to the affidavit are their names and handwriting, and that they believe the contents to be true. After which I sign the jurat, and immediately after the notary sign, attesting that the affidavit it sworn before me. That is the uniform practice. I do not remember this particular act.

**Cross-examined by Mr. WILKINS.**

Q. Do you remember the person of Elizabeth Stewart?

A. I do not, nor of Griffin.

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<sup>4</sup> The text has been made easier to read by, as in the main text of 'One Man's Justice', using full-stops rather than dashes for the end of sentences and paragraphing text, where helpful. Anything in square-brackets has been added to aid clarity or ease of reading. The £ sign before a number is used in preference to l. after it.

**JOHN POWELL.** I am a clerk in Doctors' Commons, and am attesting witness to this administration bond. I saw a female, purporting to be Elizabeth Stewart, and the sureties sign. I was not acquainted with their persons. It is dated 31st July, 1840.

**Cross-examined by MR. WILKINS.** Q. Have you any recollection as to whether the lady appeared aged or not?

A. My impression is, that she was an aged woman.

**JOHN BEETHAM.** I am a clerk in the Bank of England. I produce the stock ledger of the Bank for the £51 per cent. Long Annuities. I have an entry of one in the name of John Stewart, of Great Marlow. This is an examined copy of the book. This stock was transferred to the Commissioners for the Reduction of the National Debt, on the 11th of Oct., 1886,

**CHARLES DAWES LEWIS.** I am a clerk in the Bank of England. I produce the book in which the unclaimed dividends are entered. Here is entered £51, on the credit side to John Stewart, of Great Marlow. There is no further description of him in this book. In this other book he is described as John Stewart, of Great Marlow, Bucks, gardener. In 1886, I summed up the dividends due on that stock for the intermediate ten years, they amounted to £533. 10s. There are twenty-one dividend-warrants. That shows no dividends had been received for ten years and a half, not since April, 1826. In consequence of instructions, I prepared a form of transfer of that stock to the Commissioners for the Reduction of the National Debt. The transfers are made by the secretary of the Bank. After I prepared the form of transfer, I handed it to the principal of the office, with the warrants. I was then in the Long Annuity Office. This stock was re-transferred from the commissioners on the 20th, of Oct., 1840, to Elizabeth Stewart, of Southampton-terrace, Southampton-street, Camberwell.

**Cross-examined by MR. WILKINS.** Q. Is there any signature in your book of the Elizabeth Stewart to whom it was re-transferred?

A. Not in my book.

**JOHN KNIGHT.** I am secretary to the Bank of England. This transfer of Long Annuities, standing in the name of John Stewart, to the Commissioners for Reduction of the National Debt, is not executed by me, but by William Smee, the accountant-general. I find a transfer in this other book, that is executed by me.

**HENRY HYATT.** I keep the Greyhound in at Great Marlow. I went there on the 22nd of July, 1836.

In May 1840, I remember the prisoner Fletcher coming to my house to inquire after Mr. Stewart, of Great Marlow, to know if I knew him. As near as I can say, it was the beginning of May. He was there between six and seven hours. He said, his business was to find out the relatives of Mr. John Stewart, of Great Marlow, who had died worth a great deal of property. I did not know John Stewart.

After some conversation with Fletcher, I recommended him to inquire of some old men who might know Stewart. I named several to him, and went with him to inquire of those men. He said, he came from the Lord Chancellor, from Government. He gave me his name, before he left, as Mr. G. Jones, 24, Little Guilford-street, Russell-square.

I took him to an old man, named Windsor, who, I thought, might know Stewart, and a man named Holmes, also to Loosely, and M'Lean, and I took him to Holmes's wife, down at Court Garden, where Stewart used to live, as I was informed. I did not know any thing of Stewart before I went there.

I heard what the people told Fletcher. We could not hear of any relation of Stewart. They told him there never was any relation of Stewart's, except a brother that went to sea many years before, and was supposed to have gone to America. Fletcher took a careful memorandum. He seemed to be writing down. We went to a grave-stone in the church-yard, and he took notes of what he thought proper. We found a grave-stone of Stewart.

When Fletcher went away, he requested me to get all the information I could, respecting any relation of Stewart's, and send him word, and I should be well rewarded for it, and gave me his address. As Windsor could read and write, I asked, whether it would not be better for Fletcher to correspond with Windsor, as it would encourage him to find out those who knew Stewart better than I could.

In about a fortnight or three weeks after this, the prisoner Barber came down. He staid about six hours with me. He went into my commercial-room. Some of my people told me a gentleman wanted me. I went in, and he said, "Is your name Hyatt?". I said, "Yes". He said, "Did you have a gentleman here, sometime ago, of the name of Jones?". I said, "Yes, there was".

He said that he came from Mr. Jones, and Mr. Jones and him were all one party; that he had come to inquire after the relations of Stewart, who had died worth a great deal of property, and all they wanted was to find out the real owner for it. He gave me his name, before he left, as Clarence Peckham., Esq., Nelson-square.

He said, there was a great deal of the property at Chelsea, and so had Mr. Jones said before. Something was said about property in the Sinking Fund, but that was gone, and so had Jones said before. There was something mentioned about £600. That the property in the Sinking Fund died with him, but I think I heard that from Jones previously, in conversation with the old men.

Barber said that to me as well as Jones.

I took him round to the old people. They said there was a brother of Stewart's many years ago. They had some account from Stewart that his brother was gone to sea, it was supposed to America. M'Lean, the last man we went to, agreed to meet Barber at my house. He came up, and had a glass of grog. Barber was in the front room. M'Lean came to the bar. Barber came out to him, and talked to him. I was in and out, and did not hear all the conversation. I asked Mr. Barber where this property was at Chelsea, as I had some friends there.

He said it was near the College.

I said, "Do you know a gentleman named Eagleton, surveyor of King's taxes, there?".

He said, "No".

I then asked if he knew Eagleton, who kept the Roebuck. He said he did not, nor did he know any such place. I did not press the inquiry.



After he had seen M'Lean, he said he would not trouble me further, he would go and see the old men himself, and he went out. I said I was going to London in a week or so, and Mr. Barber asked me to come and dine with him, and get him all the information I could. I said I would endeavour to get all I could, and tell him when I came up; and when I came, I went to No. 52, Kelson-square. A woman answered the door. I asked if Clarence Peckham, Esq., was in. She asked my name. I told her Hyatt. She went away, then returned. I went into the passage, and Mr. Barber came. I did not dine with him. It was between nine and ten o'clock. I went for the sake of my word, as I promised. I told him I could not hear of any of Stewart's relations, except the brother before mentioned.

**Cross-examined by MR. GREAVES.**

Q. This is nearly four years since?

A. Yes. I can tell a great deal of the conversation, but what I did tell is true. There was a great deal I cannot think of. There were several old people, whom the person giving his name as Jones spoke to. I went with him to those people who knew about Stewart, and several of them I asked, whom Windsor recommended, who might know Stewart.

**Cross-examined by MR. WILKINS**

Q. When you went to Nelson-square, did you notice whether there was a brass plate on the door?

A. Not particularly. I cannot say whether there was or not. I never knew Barber come to my house except on that day. This bill (*looking at it*) is my writing, I believe. I do not know whether there was a bill made for the refreshment Mr. Barber had at my house. There was not much had. I think he had some wine or negus, I cannot say which. He had refreshment. I do not recollect what it was. He gave M'Lean some grog. The second item in this bill is three sixpenny-worths of gin and water.

I do not recollect whether Mr. Barber had tea. He wanted to go away as soon as he could. I think he went about five o'clock, I cannot say exactly. He was in a hurry to get away, and had my horse and chaise to go to the railway, for which he no doubt paid me. My charge, I dare say, would be about 5s. Mr. Barber was only once at my house, to my knowledge. The bill produced is my writing, but it was not made out to Mr. Barber.

Q. Now, do you mean still to adhere to your statement, that it was within a fortnight or three weeks afterwards that Mr. Barber came down?

A. Yes, I do. (*looking at the bill*). I will swear it. Was not in Oct that he came down and talked to these old people. I do not think it was more than a fortnight after Fletcher came. It was not more than three weeks, as near as I can tell.

I have given the names of all the parties he spoke to. Inquiry about this was first made of me on the 14th of Jan. Mr. Barber first asked if my name was not Hyatt. I said yes. He asked if a gentleman named Jones had not been there. I cannot be mistaken about that.

Q. Did not he ask if a gentleman had been down there about Stewart, and did not you say, "Oh yes, Mr. Jones, a tall, dark gentleman?"

A. No, I did not. Mr. Barber did not say, "Ah it is all the same". He said he came from Mr. Jones, and Mr. Jones and him were all one, one firm, and I expected that was the firm of lawyers.

**COURT.**

Q. Are you sure he mentioned the word firm?

A. Yes, and I took them to be Chancery lawyers under Government.

**MR. WILKINS.**

Q. Do you mean to tell these twelve gentlemen, on your solemn oath, you cannot be mistaken as to a conversation four years ago, when your attention was not called to it till Jan.?

A. I am not. I noticed it particularly, because it was a sort of excitement to me, a gentleman, as I thought, coming to me. I have repeated the conversation over and over again, and have made a great deal of inquiry, and that will justify what I have said is correct.

There is no mistake about it. Barber said he came from Mr. Jones, that Mr. Jones and him were all one firm. I have not given two or three different versions of this. He said Mr. Jones and he were equally as one firm. He spoke as if they came from one place and one firm, and that is what he said.

Q. Did he say he and Mr. Jones were equally as one?

A. No, that I swear. He said one firm. The inquiries were the same. They were all on one business, and he said he came from Jones. I had not been at Nelson-square a minute or two, before I saw Barber.

I am quite sure he said Clarence Peckham, Esq., and I asked for Clarence Peckham, Esq., not for Mr. Peckham.

**MR. ATTORNEY GENERAL.**

Q. Did you make any memorandum in your book about Clarence Peckham, Esq.?

A. Yes. I have the memorandum here which I made at the time Mr. Barber was at Great Marlow. I wrote it from what he said. I made it that day. (*read*). "Clarence Peckham, Esq., 52, Nelson-square".

My House is about six miles and a half from Maidenhead station. I keep a horse and chaise, which I let out, and sometimes let it to people to get to the station.

The bill produced does not relate to Mr. Barber's visit, when I made the memorandum in my book. It is a date when I never saw Mr. Barber. I am quite sure. I told Mr. Barber I was coming to London shortly.

**WILLIAM WINDSOR.** I live at Great Marlow, and am a labourer. I do anything I can get to do. I remember receiving a letter from a person of the name of Jones. (*looking at a letter*) For anything I know, this is the letter. I was living in West-street, Great Marlow, at that time, and was a baker. I dare say this is the same letter. Mr. Hyatt had it from me.

**Cross-examined by MR. WILKINS.**

Q. Look at Mr. Fletcher, did you ever see him before?

A. Not that I know of. It is a good while ago. I have no recollection of having seen either of these gentlemen. I saw two gentlemen. one came some time after the other. I do not know how long.

one gentleman came to me first. Some time after that I had a letter. It was some time after I had the letter that I saw the second gentleman. I do not know how long.

**COURT.**

Q. Was it after you had the letter that the second gentleman came, or before?

A. Well, I cannot say about that, whether it was before or after.

**MR. WILKINS.**

Q. Try to refresh your memory, was it not some time after you had that letter, before the second gentleman came?

I think it was before. I cannot recollect. I do not know what makes me say so. I cannot tell which way it was. I had not the letter many days before I took it to Hyatt.

**MR. GRATTAN.** I am acquainted with Fletcher's handwriting, from his having kept an account at the London and Westminster Bank where I am a clerk. I should decidedly say this letter is his handwriting.

**Cross-examined by MR. WILKINS.**

Q. I believe you always considered him a man of the first respectability?

A. We always considered him a respectable man. He banked with us three or four years, and kept his account in a very gentlemanly way. (*letter read*).

"To Mr. William Windsor, West-street, Great Marlow, Bucks;

24, Little Guilford-street, Russell-square, London, June 25, 1840.

Sir,

When I was at Great Marlow, about a month since, inquiring after the relations of Mr. John Stewart, who was gardener to Mr. Strobe, of Court-garden, you had the kindness to promise me, that if I wanted any further information respecting Mr. Stewart you would obtain it for me; from this circumstance I now take the liberty to write to you upon the subject, with the understanding, as I before promised, that you should be paid for all or any trouble you might take in the matter; I should therefore be much obliged if you could make out the name of the gentleman that Mr. Stewart lived with before he came to live with Mr. Strobe, and the place where; and also, if possible, what part of Scotland Mr. Stewart came from. This I was told, if I recollect rightly, might be obtained from a fellow-servant of his, who is a Scotchman, and now living at Marlow; and every information you may have obtained respecting him since I was there, I shall be glad to learn. I have been able to learn that Mr. Stewart had a sister living about twelve years since, in America. If you will take an early opportunity of making the above-mentioned inquiry, and will let me know in the course of a few days, you will much oblige,

Sir, your obedient servant,  
G. JONES.

N.B. Be so good as to address your letter to me thus. Mr. Jones, at Miss Hawkes's, No. 24, Little Guilford-street, Russell-square, London."

**MR. WILKINS.** Q. Whose handwriting is that [sic]. (*producing a letter*).

A. That is something like Fletcher's. I am not able to say it is his, but it is something like his writing. I have a doubt about it.

**WILLIAM HOLMES.** I am a labouring man, and live at Great Marlow. I have lived there fifty years, or more. I know Henry Hyatt, who keeps the Greyhound. I recollect Hyatt bringing a person to me about four years ago, to make inquiries after a person named Stewart. He only brought one at that time. He came twice, with a different person each time. I should not know the first person he brought. perhaps I might have some knowledge of the second one if I were to see him.

To the best of my knowledge it was Mr. Barber. He asked about Stewart's money. I told him it was in the sinking fund, and I thought it was very little use looking after it. I do not think he said anything about Stewart's relations, but I told him I thought he had no relation.

**Cross-examined MR. WILKINS.**

Q. The first one came somewhere about in the spring, did he not?

A. I cannot tell what time it was. I cannot tell how long the first came before the other. I did not take any account of it. I cannot tell whether it was a little or a long time. Whether it was one month or five.

**COURT.**

Q. Did anything pass between you about what countryman Stewart was.

A. No, I do not remember.

**JAMES M'LEAN.** I live at Great Marlow, and have done so some years. In 1840, I remember some persons coming down to make inquiries about John Stewart. I only recollect one coming at a time. one person came along with Henry Hyatt. I had very little conversation with him.

About a fortnight or three weeks after, I saw another person. I had very little conversation with that person. Hyatt also brought him. I should not know either of those persons again.

I knew John Stewart in his lifetime, while he was in Mr. Strode's service. I never heard him speak of where he came from, or whether he had relations, or not. I told the first person who came down that I knew Stewart, but no relations belonging to him whatever, and I never knew or heard of any.

Nothing passed about what countryman he was. Stewart was a very close man, and I knew nothing at all about him further than knowing the man himself, and therefore I had very little to talk about him. on the second occasion I said the same thing.

**Cross-examined by MR. WILKINS.**

Q. When the first man came to you, was it not in the spring?

A. It very likely may be in the spring, but I cannot positively say. I know it was in fine weather. I cannot swear that I saw the other person for some months after. I was so indifferent about Stewart that I did not interest myself at all in it. I do not think it so long as months before I saw the second person, but I could not was swear it.

**ROBERT LOOSELY.** I live at Great Marlow, Buckinghamshire, and have done so some years. I remember John Stewart very well, who lived with Mr. Strode. In 1840, I remember a gentleman coming down, to make some inquiry about him. Mr. Hyatt brought him to me. I should not know the gentleman again. He asked me several questions about Stewart's family affairs. I was frequently in the habit of conversing with Stewart in his life-time, but not upon family affairs.

He has told me what countryman he was. I told the gentleman who came down that Stewart had said he came from Scotland. I never heard Stewart say a word about any relations. I had heard say that he had a brother, and told the gentleman that, but no further. I remember another gentleman coming down a fortnight or three weeks after, or thereabouts. Mr. Hyatt brought him to me. It was a different person to the first. I should not know him again. He asked me the same questions about Stewart's affairs, and so, on about his relations. I told him I had heard say he had a brother, but he never told me so. I told the second gentleman that he came from Scotland.

**Cross-examined by MR. BALLANTINE.**

Q. Stewart was rather a close person, was he not?

A. Very close, he had not much conversation. He never used to talk about his family, or about his birth. I know nothing about his being a native of Scotland, no more than what I heard him say. It is sixteen or seventeen years since I had the conversation with him, and three or four since I saw these two gentlemen. I cannot recollect particularly the conversation I had with either of them. I will not swear that I said a word about Stewart's country, it is so long ago.

**COURT.**

Q. What is it that you won't swear?

A. About his saying anything about his family, or family affairs. I am sure I told the gentlemen, that Stewart had told me he came from Scotland.

**Cross-examined by MR. WILKINS.**

Q. What is your age

A. Seventy. my memory is not so good as it was. I have seen Mr. Weir, Mr. Freshfield's clerk, three or four times, about this business. He has talked to me about this business. He said to me, "Do not you remember a gentleman coming down to Great Marlow, to inquire about one Stewart?" and he then said, "And, in about three weeks afterwards, don't you remember another gentleman came down?". I do not think it was more than three weeks. I would not swear it. It was about spring when the first gentleman came. I do not recollect whether it was in autumn when the other gentleman came, it is so long ago. I will not swear it was not in the autumn.

**SARAH HAWKES.** I am in the service of Mr. Lodge, of No. 5, Tavistock-street, Bedford-square. In 1837, I lodged at 35, Berwick-street, Soho, with a person named Mrs. Richards. Mrs. Dorey, the prisoner, was there with her. She was not married at that time. Her name was then Georgiana Richards. I lived in the same apartment with Mrs. Richards, and Mrs. Dorey who was her daughter, as near as I can correctly state, for a year and a half.

I saw Mr. Saunders come there once, and Mrs. Saunders once. She was Mrs. Richards's daughter, and the sister of Georgiana. I afterwards went to reside at 16, Little Guilford-street, Russell-square. I cannot state the date. I afterwards went to 24, Little Guilford-street. I was in the embroidery line at that time.

Mrs. Dorey, who was then Georgiana Richards called on me at 24, Little Guilford-street. I cannot say when. I cannot tell what year it was in. I think she told me she was then living at Mr. Wybrow's a music-seller's in Rathbone-place, and that it was called the Temple of Apollo.

She said, "I have called upon you to ask a favour[.]"

I asked her what it was.

She said, "It is to know whether you will allow me to have some letters left at your address, under the name of Mr. Jones?"

I said, Yes[.]"

She said, "Don't you remember hearing me and my mother speak of some property that was coming to us?"

She said, Mr. Jones was the lawyer.

About a fortnight or three weeks after, a letter came to me in that name. I took it the next morning to Mr. Wybrow's, at the Temple of Apollo, and left it in the shop. I think I saw Mr. Wybrow behind the counter. I told him to give it to Miss Richards.

I received another note after that. I cannot tell whether it was a week or a few days after. It was roughly folded up, and had the same address. I took that also to Mr. Wybrow's.

I saw no more of Miss Richards, after that, for a year and a half, or two years, that I recollect. I did not then learn from her, whether or not she had had these notes.

**Cross-examined by MR. JAMES.**

Q. How long had you known Miss Richards?

A. I never knew her till I went to reside with her. I cannot say when that was. I think it was in Jan., as King William IV died the following June. She then held a counter at the Pantheon-bazaar, in Oxford-street. I understood she supported, or contributed to support her mother. Her mother was living with her at Mr. Wybrow's.

What she asked me was, if I would take the letters in, and take them to Mr. Wybrow's. I never saw her open or see any letter. Her mother had formerly told me, that she had lost a deal of property abroad, for her husband had died at Lisbon. That had been the subject of conversation. She appeared to be a person who had moved in a respectable sphere of life. She told me that her husband was a Lisbon merchant. I do not know whether that is so or not.

**MR. CLARKSON.**

Q. Do you remember ever seeing Miss Richards in mourning?

A. Yes, in deep mourning, when I met, her, after the time of the letters, which was two years, as near as I can think. She said, "I have lost my poor mother."

**MR. JAMES.**

Q. Was not the mother dead at that time?

A. She was. I did not know it myself. I never saw the mother after that. I now know that she is dead.

**COURT.**

Q. How long had you seen her before she came to ask to have the letters left?

A. I cannot remember.

**EMMA HARTWELL.** I am the wife of John Hartwell, and live at No. 2, Mead's-row, Westminster-road. In 1840 I lived as servant to Mr. Bradley, a grocer, at No. 1, Southampton-terrace, Camberwell. I do not remember exactly at what time I went into Mr. Bradley's service. I cannot say the month.

Mr. Fletcher came there in the beginning of the spring of 1840, to look at some apartments. I saw him, and spoke to him. He said the apartments would do for the lady that he was taking them for. I showed him the rooms. There were two rooms on the first floor and two on the second, two sitting-rooms and two bed-rooms. Mr. Fletcher afterwards came again with an old lady and Mrs. Fletcher. I believe they walked. They staid there for an hour or so. I cannot say whether they took tea or not.

The old lady remained, and occupied the apartments. She staid there three or four months. She appeared to be between sixty and seventy years of age, I think. She appeared very old and feeble. She was not, to say, short; rather tall, and thin, and pale. She had very weak eyes. She had the gout in her arm occasionally. She complained of her arm and hand sometimes. She did not go out a great deal. She generally took an umbrella with her, which she used as a walking-stick. She generally wore a half-mourning cross-barred gown. I occasionally saw her in it a black silk dress. She wore a dark shawl, with a great deal of mixture in of all colours.

While she was there Mr. Fletcher called sometimes twice a day, sometimes three times a day, and occasionally not so often. Sometimes he came between four and five o'clock in the afternoon, or later, and sometimes between ten and eleven in the morning. I did not know where Fletcher lived exactly. He lived near, not further from town. Mrs. Fletcher sometimes came. I very seldom saw her. I think I have seen Miss Fletcher there once or twice perhaps.

I only heard the old lady's name by letters, to my recollection. Letters came to her addressed to Miss Stewart. I did not hear any of the Fletchers ask for her by name. When they came they said, "Is the old lady at home?". I never heard Mr. Fletcher mention her name.

I have not seen her open the letters that came. I do not know what she has done with them. I have received them at the door, and taken them to her, and saw no more of them. She received them. She did not give them back to me, or say they were not for her.

I have seen Mrs. Dorey there. She came to visit the old lady occasionally. They sometimes went out together. I do not know where they went to. (*looking at a gown produced by Forrester*). This is the pattern of the gown I saw the old lady wear, but the colour is washed out very much to what it was. I am quite certain about the pattern. It is calico. This was black, and this was white. I saw it at the Mansion-house. It was brought to me before that.

Mr. Fletcher occasionally took tea with the old lady. I think Mrs. Fletcher came once. Mrs. Dorey was generally accompanied by Mr. Fletcher when she came. I did not know her before. I did not

know whether she was any relation or connexion of the old lady's. I never knew the old lady visit anywhere in the neighbourhood, except at Mr. Fletcher's. I know of nobody in the neighbourhood coming to see her. She made no acquaintances in the neighbourhood while she staid there. no one came near her, except the persons I have mentioned.

I believe she went to town two or three times while she was living there. She has been absent some hours. I cannot fix the date at which she went away finally. She generally paid for her lodging herself, I believe. She paid by the week. I did for her while she was there.

**WILLIAM WYBROW.** I keep a music-shop in Rathbone-place. The Temple of Apollo was my old house. That is also in Rathbone-place. I knew the female prisoner as Miss Richards. I became acquainted with her, to the best of my belief, in November, 1838, but I am not sure. She called to see some lodgings at my house. One of my daughters had given her some lessons on the guitar, and I had some knowledge of her before she took the lodgings. At that time she kept a counter at the Oxford-street Bazaar.

She took possession of the apartments a few days after taking them. Her mother and two nieces, the Misses Saunders, came with her. They continued to lodge there from that time to the summer of 1840.

I should say Mrs. Richards appeared to be about seventy-five years of age. She was rather tall and thin, very infirm, and rather pale. Her eyes were rather blood-shot and weak. She walked rather feebly. I never saw her without an umbrella, which she used as a kind of support, as a walking-stick.

She wore a dark bonnet, and a very dark cloak. I cannot say whether it was an invisible green or a black very much faded. I cannot say what sort of gown she had.

In 1840 the old lady left my apartments. I cannot say the time. It was in the summer. Miss Richards and the nieces continued with me. I am not quite sure whether both nieces did, but I think the younger one did. Miss Richards continued to attend at the bazaar, as far as I knew.

She said her mother was in very sad health, and was going to Camberwell for the benefit of her health. I have heard her say once or twice, or frequently, that she was going to see her mother at Camberwell; and likewise Georgina<sup>5</sup> Saunders, the younger niece, said she was going to see the old lady. I cannot say whether she had taken lodgings or a house at Camberwell, or who took them for her. I cannot say how long she was away from my lodging. I am not quite sure whether she returned. I rather think she did, but I cannot positively say. Miss Richards and the Misses Saunders afterwards left. I cannot say how long after the old lady had gone to Camberwell it was in the course of the same year.

Miss Richards left in November, to the best of my belief, but I cannot say whether the old lady left and went with them. I think she did, but I am not positive. I am not sure whether she returned at all, but I think she did. I did not know from Miss Richards where she was going to when she left. While they were lodging with me I knew of letters coming from Bristol.

I cannot say that I know a person named Hawkes. I do not remember receiving any letters brought to my house while they were lodging with me.

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<sup>5</sup> This is correct: Georgina Sanders ('Georgie') was the niece of Georgiana Dorey née Richards.



**Cross-examined by MR. WILKINS.**

Q. Who attends in your shop generally?

A. Myself. I did so while at the Temple of Apollo. There was a private door to that house. If the bell rung, the party occupying the apartments would answer it. I had not a servant. I did not attend the door myself. We only let the second floor, and if anybody rung their bell, of course the party who occupied the second floor would answer it; in case they did not, perhaps one of my daughters would. I did not see the persons who generally visited Miss Richards and her mother.

I have known several persons come there, but I cannot say I have seen Barber there. I saw a man named Griffin at the Mansion-house. my son did not point out a man to me that had been in the habit of coming to the house. I have never said so. He said he thought he knew one of the parties. He did not point Griffin out as a party that had come to my house. I have no recollection of his saying so. I said I thought I had seen Griffin come there, but I would not be positive. When I was down stairs at the Mansion-house, I do not recollect my son pointing out Griffin as the man that came there. If my son had been present, he would have seen the whole of the parties, but I was not in the Court when he was examined.

**Cross-examined by MR. GREAVES.**

Q. Your recollection is very imperfect as to the time the parties were in your house?

A. Yes. I positively swear Mrs. Richards was in the house in the year 1840. Miss Richards left my house some time after she left the bazaar. I will swear she was in my house during 1840 some time. I know it was in the summer, and, I think, rather towards the latter part. I can say the old lady was lodging in my house some part of the summer, and, I think, the latter part of 1840. I am quite sure Mrs. Richards did not remain there till the latter end of the summer. I cannot tell the precise time she left, but I know she left to go to Camberwell. I am not quite certain about the time the old lady left. Miss Richards left after she left the bazaar, which was somewhere about Nov., to the best of my belief.

**Cross-examined by MR. JAMES.**

Q. You say she was called "the old lady" there?

A. Yes. I understood she was the mother of Miss Richards.

**SIDNEY HAMPDEN WYBROW.** I am a clerk in the Post-office, and the son of the last witness. In 1838 and 39 I resided at 24, Rathbone-place, with my father, at the Temple of Apollo. I know Georgiana Dorey. I knew her as Georgiana Richards. I recollect her lodging at my father's house. I am not certain as to the date. It was in 1838, to the best of my recollection. There were two nieces lodged in the house, and also her mother, Mrs. Richards. I do not know her Christian name.

I knew one of the nieces. The youngest was called Georgie.

They were there about a year and nine months, or two years, I think, altogether. I think they left in 1840. I am not at all positive as to dates.

I have seen the old lady on several occasions. She was a very old woman, and very infirm. She was subject to a violent cough, and very seldom went out. When she did she stooped a great deal, and coughed also, and generally carried an umbrella with her. She usually wore a dark gown, I think, and an old cloak. When she did go out she used an umbrella

to assist her in walking.

I remember her leaving, but I do not know the date at all she left without her daughter first, to go to Camberwell, I think, about three or four months previous to their leaving altogether. They left finally in 1840. I cannot say what part of the year it was. I have not the slightest recollection as to dates.

When the old lady left, leaving her daughter there, I understood she went to Camberwell I think I knew from one of the nieces that she went there for the benefit of her health. I never heard Georgiana Richards say where her mother was gone to. I am not quite positive that the old lady returned again.

There were not very many persons visited her when she lived at our house. I appear to have a recollection of Mr. Barber having called there on several occasions. I have seen people call. I believe I have let Mr. Barber in once or twice.

I might have stood at the door, and, rather than give them the trouble of coming down from the second floor, I perhaps might let people in, or ask them to walk through the shop. When I have let in persons, Miss Richards has been asked for.

**Cross-examined by MR. WILKINS.**

Q. How long have you been a clerk in the Post-office?

A. Very nearly four years. Before that I studied music. I never made a practice of it. I think my age is twenty-two or twenty-three.

I remember, when I was at the Mansion-house, standing at the bottom of the stairs to see the different prisoners go by. I did not point out Griffin to my father; I pointed out no one to him. He asked me whether I remembered any of them. I said I remembered one of them; but three of them went up, and I do not think he understood which, but I think he believed I meant Griffin. My father did not mention Griffin's name to me.

When we got into the Court they asked me whether I knew either of the prisoners, and I pointed to Barber, not knowing either of their names; and the only reason I have for saying I believe my father thought it was Griffin is, that when we came out he said, "I thought it was Griffin you pointed out". I may have told my father it was the tallest of the three, I cannot say.

I will not swear that Barber was ever at the Temple of Apollo. To the best of my belief he has been there on several occasions.

**KEZIAH DIXON.** My husband's name is Seth Dixon. We live in Crown-court, Dean-street. on the 10th of April, 1841, (I think this day three years) I was engaged by a Mrs. Ellicot as char-woman at No. 24, Dean-street. I have acted in that capacity in that house until now. When I first went there Mrs. Dorey, and her mother, Mrs. Richards, were living there. I remember a niece of Mrs. Dorey being there. I cannot exactly say what her name was. Her surname was Saunders. I learnt from Mrs. Dorey that they only came the month before I went. I remember the old lady asking me to act as char-woman to her also, and I did so.

I remember the death of the old lady. I think it was the latter end of June in the same year. She died in that house.

Mrs. Dorey left last Christmas twelve months. I did not assist the family in their apartments very often before the death of the old lady, only now and then for an hour or so. After Mrs. Richards's death I assisted Mrs. Dorey occasionally; sometimes more frequently.

After the death of the old lady Mrs. Dorey left to go out of town. I understood from her that she was going to Bristol. She did that I think two or three times after her mother's death. I think three times. She staid away sometimes a month or six weeks. I have not known her go any where else, only sometimes on a visit to Camberwell she told me she visited a physician of the name of Fletcher there.

I have seen the prisoner Fletcher before. I answered the door to him once at No. 24, Dean-street. I know William Saunders and his wife. Mr. Saunders was in the habit of coming to the house occasionally, and Mrs. Saunders was on a visit once for about three weeks or a month. I understood she was Mrs. Dorey's sister. I saw Mr. Saunders there while the old lady lay dead in the house.

I recollect once opening the door to Fletcher at that house I cannot positively say I had seen him there more than at that time. I might have seen him, but I cannot exactly say. He asked for Miss Richards. She was not at home, and he left a message with me, for her and her niece to come and dine with him next day, on the Sunday.

I should think the old lady was about seventy-three or seventy-four years of age. She was rather infirm. I did not notice any thing particular about her. She was subject to the gout. I have heard Miss Dorey talk of it with her, and the old lady as well. I think the gout was in her hand. I never saw the old lady dress in any thing but black. I think I saw her once in a cotton dress. After the old lady's death Mrs. Dorey gave me a gown of her mother's. The gown produced is what remains of it. I afterwards gave it to Forrester the officer.

**Cross-examined by MR. GREAVES.**

Q. When were you first applied to to give evidence?

A. I think it was in March last. I do not recollect the day, but I think it was at the beginning of March. I have never been before the Lord Mayor.

**Cross-examined by MR. JAMES.**

Q. Did you know that the Saunders's, Mrs. Dorey's relations, lived at Bristol?

A. Yes.

**DUNCAN M'PHERSON.** I am a school-master at Callander, in Scotland. In the year 1840 I was the session-clerk of the parish of Callander.

I remember receiving a letter, purporting to come from a person of the name of Stewart. I think I received three letters, but I only retained one of them. I think I must have destroyed them, because I was not in the habit of keeping letters of that sort. I have looked for them, but cannot find them. I found this one.

**MR. GRATTAN re-examined.** I have a doubt that this letter is Joshua Fletcher's hand-writing. I cannot say positively whether it is or is not. It is something like his writing. let me see it again. I should act upon that letter at a rapid glance in business as Fletcher's writing. I believe it to be his hand-writing.

**Cross-examined by MR. GREAVES.**

Q. Have you not a great deal of doubt about it?

A. When I look into it closely, I see there is some disguise about it, but if it was brought to me in business, with a rapid glance I should act upon it. It depends on circumstances whether or not I should refuse to act upon it. Looking into it minutely I should say it was Fletcher's writing; and as persons do not always write alike I should act upon it at his writing. I have frequently seen him write.

*(Letter read, directed.*

Mr. Duncan M'Pherson, session clerk, Callander, Perthshire, Scotland.

No. 1, Southampton-terrace, Southampton-street, Camberwell, Surrey,. London, Oct. 9, 1840.

Sir, On Saturday last, Nov. 3, I wrote to you to have the goodness to send me the certificate of marriage of Robert and Jane Stewart, which took place in your parish in or about the year 1756, inclosing a post-office order for 2 for the same. As I have not heard from you, I am anxious to learn whether my letter and its contents have reached you: you will therefore much oblige by giving me an answer by return of post.

E. STEWART.")

**DUNCAN M'PHERSON continued.** I received two letters before this. This is the last I received, and before I received this, I had written a letter.

**MR. GREAVES.**

Q. What did you do with the other letters?

A. Very frequently when I receive letters of this sort, when they accumulate, I look through them perhaps once a year, and destroy those I think of no use, and this was reserved by accident. I cannot recollect what I did with the other two. I think I must have destroyed them with some other papers of the same sort. I think I put them on the fire. I think I must have burnt them. I was in my own house when I received them. I think I may have received the first perhaps about a fortnight before I received this. I think my attention was called to the fact of having received these letters about Jan. last. I then searched throughout my papers. I kept them in drawers. I searched every drawer. I do not know that I searched every corner of the house, but I searched those places where I usually deposit the Sessional papers. I am not aware that I have a place in which I keep papers which I have not searched. I will not swear I have not.

**MR. ATTORNEY GENERAL.**

Q. Have you searched every place where papers of that sort are likely to be?

A. I have. Where the papers belonging to the Session are kept, I searched thoroughly. There may be places which I have not searched, where I keep letters of correspondence. I do not place them in the same place. I have searched all places where I kept the papers of the Kirk Sessions. This letter is my handwriting. I wrote it at the time it bears date. It is my answer to the second letter I received.

**JOSEPH PARKES.** I am solicitor to the registrar-general of births, marriages, and deaths.

I had occasion to make some inquiry with respect to irregularities in the entries of registers in my department, and in consequence of that I heard of the circumstances of this case. I went to Mr. Barber's offices, in Bridge-street, Blackfriars, accompanied by his partner, Mr. Bircham.

I think it was on the evening of the third examination at the Mansion-house, in the beginning or middle of Jan. This letter was found there in my presence, and delivered to me. It was found in one of the upper offices. I think in a tin box, tied up with the parchment letters of administration, of Stewart, and five other papers. These now produced are them. This parchment is the letters of administration to Elizabeth Stewart. This is Mrs. Stewart's statement. A letter directed to Mrs. Stewart, by Mr. Pott, of Doctor's Commons, dated 13th Aug., 1840. Mr. Potts's bill of costs in the matter of the administration of John Stewart, and two memorandums in blue ink. They all tied up together, and were delivered by me to Mr. Charles Freshfield.

*(Letter read.*

Addressed, "Mrs. Stewart, No. 1, Southampton-terrace, Southampton-street, Camberwell, Surrey, near London," post mark, 9th Oct., 1840,

dated 7th Oct., 1840, Callander.

Mrs. Stewart, Madam,

I yesterday received your letter, with enclosure, and now give the prefixed certificate of Robert Stewart and Janet Stewart's marriage. Were it in any way consistent with the duties of my office, I would comply with your desire, but were the records to be overhauled, and I found guilty of having given a false extract, according to the laws of this country I might be severely punished, if not denuded of my office; if they are the right parties, as I trust they are, I trust you may be able to adduce corroborative evidence, notwithstanding the slight difference of the female's name.

DUNCAN M'PHERSON.")

**Cross-examined by MR. WILKINS.**

Q. Did you find all these papers bound up together?

A. Yes, I think in a tin box in the upper office. The box was opened. I did not observe that it was locked. Some miscellaneous papers were found at the same time, either in the box or about the office, in different places.

**DUNCAN M'PHERSON re-examined.**

Q. Tell, as far as you can recollect, what was the desire contained in the letter to which that was a reply?

A. The desire was, that I might probably change the name Janet into Jane; and the reason assigned was, that Janet was Jane in England, that the name Janet was not used in England, but Jane for Janet. on receiving the first letter I wrote that I had found an entry of the marriage of Robert Stewart and Janet Stewart. I did not send the extract. I only gave this information, that I had found this entry. Then came a letter, desiring me to send it, but that I might perhaps make this alteration.

I cannot charge my memory with the very words, but it was to that effect, and to that I sent this answer.

Callander is fifty-one miles from Edinburgh. The name of Stewart is very common in Callander. The Earl of Moray is the heritor. Then are a great number of that name in our parish. There are about a dozen families in one district, all of the name of Stewart.

**Cross-examined by MR. GREAVES.**

Q. What date is the marriage certificate which you sent in the letter?

A. January, 1766. I have a perfect recollection of the purport of the letter which is lost. I do not say I could repeat every word, but I can say that I was desired to alter the name, and that I refused to do it I made that seen by my answer.

**COURT.**

Q. I presume in your situation as clerk, you have application to you for copies of registers?

A. Very frequently. I never, on any other occasion, received a remittance of £2 for one.

**EDMUND KEENE.** I am clerk to Mr. Potts, a proctor, and have been so eleven years. In 1840, the prisoner Fletcher came to our office. I think it was in July or August. He was accompanied by an old lady. He said he wished to give instructions for letters of administration to the effects of John Stewart. I had never seen him before. I asked who he was recommended by. He said that he had known Mr. Potts, or something to that effect, I do not remember exactly the answer. I do not think he told me his name at that time.

He told me that the elderly lady was the sister of the deceased. He gave me instructions to prepare the necessary documents. There is a form of affidavit kept printed, called the Stamp-office form of affidavit, which is necessary to be deposed to, before letters are granted, and in which there are blanks for the name of the person deceased. I made inquiries of him to fill up the blanks in that form of affidavit. This is one of the forms in blank. I took one for the purpose of receiving the instructions.

This was done in the presence of the elderly female. She did not say anything, or take any part in the matter, that I remember. She heard what was passing, she sat in the room. I proceeded to prepare the usual warrant, in which the relationship of the proposed administratrix would appear. One of the necessary pieces of information is the situation of the party deceased, whether bachelor or married. Fletcher told me what the deceased was. It must have been stated to me at the time. This is the affidavit which I filled up from Fletcher's instructions.

**MR. GREAVES.**

Q. When did you next see Fletcher?

A. Some day or two afterwards, if I recollect right. However, in the course of the proceedings to obtain the administration, I saw him several times, certainly three times. The next time I saw him after this business was in 1841. I was at the Mansion House, but was not examined. I do not know why.

**MR. CLARKSON.**

Q. Mr. Potts, your employer, was examined?

A. Yes. I do not know whether Dr. Robertson was.

*(The affidavit sworn before Dr. Robertson was dated 21st July, and stated that Elizabeth Stewart, of No. 1, Southampton-terrace, appeared personally, as the party applying for the letters of administration, that the deceased died on or about 13th March, 1827, and that his property was under £1500).*

It is always necessary, in cases of this sort, that a bond should be given, before granting letters of administration. I explained that to Mr. Fletcher, and that sureties would be required, and he gave me the name of Thomas Griffin, I think. I have no document to which I can refer, to refresh my memory.

It was suggested to Fletcher that there must be an affidavit to account for the delay. It is always the case when there is a certain lapse of time in taking out letters of administration. Such an affidavit was prepared by me on the same occasion. This is it. *(This was dated 31st July, 1840, and stated, that the deponent, Elizabeth Stewart, was the lawful sister, and only next of kin of John Stewart, late of Great Marlow, Bucks, gardener who died intestate, a bachelor, on 13th March, 1827; that the deponent was residing in New York, at the time of his death, and was not aware of it till May last, when she returned to this country, which was the reason why letters of administration had not been before applied for).*

The facts which I put into this affidavit were furnished me by Mr. Fletcher. I then spoke about a bond, and he gave me the name of one of the sureties, Thomas Griffin, at least the name was given me, I do not remember whether it might be from him or the woman. It was at the same meeting. I told them two were necessary, and Fletcher asked me, as he had not another surety, whether I could procure him one. He should be very willing to pay for his attendance and trouble. When I found there was apparently no risk, I told him I was willing to procure him a party who would sign the name, who would become co-surety with the sister of the deceased and Griffin.

I then proceeded to calculate the duty, it was £45 Fletcher handed me the money. I then prepared the bond. This is it. I wrote that in the public-office. I afterwards prepared this other affidavit. The first one was objected to as insufficient.

I prepared that from instructions I received, a portion of it from Mr. Fletcher, and afterwards from Mr. Barber. After preparing the first affidavit I communicated with Mr. Pott. I should say I did not introduce the names of the sureties to Mr. Pott before I went in to the surrogate, it is not the custom to do to. I think I accompanied Mr. Pott and the administratrix, (the elderly person and Fletcher,) to the surrogate. If I did I saw the parties sworn. I afterwards accompanied the elderly lady and Fletcher to the Prerogative-office. I there filled up the bond. John Gregory is the name of the other surety I agreed to furnish. He is my brother-in-law. The elderly lady then signed the bond at the office. Griffin was not there then. no particular appointment was made for Griffin's attendance. They were to send him.

I kept the affidavit and the other papers in my possession. I paid the duty on the 3rd of August, to Mr. Powell, the clerk of the seat. It is not customary to pay until the bond is completed. I should say that the bond was certainly completely executed before I paid the money. It is useless to pay the money, until the papers are completed. I keep it in my possession till the bond is complete. I remember bringing my brother-in-law down to execute the bond. I saw him execute it. After that, and after paying the duty, I lodged the documents with the clerk of the seat.

I was afterwards sent for by him. From my objecting<sup>6</sup> to the affidavit, I believe it was referred to the registrar. I saw the registrar on the subject. He declined to receive it. Upon which a letter was written to the administratrix, whether by me or Mr. Potts I do not know. It was addressed to Southampton-street, if I recollect right, or Southampton-terrace, Camberwell. I saw the letter before it was sent. I do not recollect what the contents of that letter were, not the words, the purport of it was, that the affidavit had been objected to, and we should require further instructions.

Fletcher called in consequence of that letter, and I received from him on that occasion, a portion of the instructions to enable me to prepare a second affidavit. I first prepared them roughly on a piece of paper. I have not preserved that piece of paper. If I have not destroyed it, it is mislaid.

There was afterwards a draft made of the affidavit, when complete, in my handwriting. Fletcher gave me certain instructions, and I prepared the affidavit. He said he understood there was a box in the possession of a clergyman at Great Marlow. That was stated to the clerk of the seat and the registrar, and they directed application should be made to the clergyman to look into this box to ascertain, in fact, whether there was any will contained. Fletcher was present, and heard that pass. I afterwards went into Mr. Potts's room with Mr. Fletcher. I did not then mention that direction to Mr. Potts. I think it had previously been mentioned to Mr. Potts.

Fletcher said he believed there was no will. He understood there was no will. I forwarded the draft of an affidavit to the elderly person, Mrs. Stewart. I prepared and forwarded that by Fletcher's direction. The affidavit was drawn in the first instance by instructions given by Fletcher. That was objected to by the registrar as insufficient. other facts were required, and then Fletcher, on being applied to, sent Mr. Barber.

Mr. Barber was informed what was required, and from him we received written instructions, which I have.

This is the draft of the affidavit I prepared, and which was objected to, and afterwards perfected, as in red ink, but it had been submitted to him several times. There are other alterations made in black ink. Those were the first. The subsequent ones were in red ink. Those alterations were from instructions received from Fletcher, and afterwards from Barber.

These are the written instructions I received from Mr. Barber. The draft of the affidavit appears to be signed "Elizabeth Stewart" and "T. Griffin". The draft came back to me in this state. There is the word "approved" above the signature. I required to have the signatures of Stewart and Griffin to this, being a very peculiar case, and the instructions not being given very fully. I had no instructions furnished to me, which I can produce signed, or any document emanating from Griffin or Stewart. I required their signatures to the draft, being a very peculiar case, and in order that we might be sure the parties were cognisant of the fact; and more particularly because the registrars in general, will not look at any draft-affidavits unless they can ascertain that the parties will really swear, in order that there may be no perjury. They will not look at it until it is sworn, unless under very peculiar circumstances; and I therefore produced this signed. I think Fletcher brought it back, "approved," with these signatures upon it. I then took it as approved, to the clerk of the seat, and afterwards, by his direction, submitted it to the registrar, as is always the case.

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<sup>6</sup> Unclear what is meant here. Why would Keene object to the affidavit? *The Times* has, "The registrar having declined to receive the first affidavit, a letter was sent to Camberwell to the administratrix, informing her of the fact, and requesting further instructions." *The Times* (1844) *The Will Forgeries*. 12 April.



The affidavit was not at that time perfect. I afterwards received the draft back from the clerk of the seat. It was objected to from time to time; at length it was perfected.

The registrar directed application should be made to the clergyman, having been informed this box was in his possession, to ascertain whether any will was contained in the box; and that. The answer should be submitted to him, the registrar. An application was made to Mrs. Stewart for that purpose. I think a letter was written. This is the letter I wrote. (*This letter was dated 13th August, 1840, signed Frederick William Potts, and directed, Mrs. Stewart, 1, Southampton-terrace, Southampton-street, Camberwell, and stated that the draft, approved by herself and Griffin, was not deemed sufficient, and requesting her to write to the clergyman of Great Marlow, for further particulars about her brother's property, to inquire whether there was any will, and to forward the reply to him, Mr. Potts*).

After I had written that letter, Fletcher called again. He was informed of all that that letter states. It was gone through with him, and he went away, if I recollect, promising that the application should be made to the clergyman.

I do not think he said any thing about his attorney on that occasion. I think it was on a previous occasion, when application was made to him to amend the affidavit, stating that certain amendments were required, he said that he would send his solicitor, Mr. Barber, a very shrewd, clever man. That was before I saw Mr. Barber at all.

Mr. Barber then called. The circumstances were all detailed to him. I am not aware that he took any notes in writing, of the information I gave him. Mr. Barber, when I had told him this, said he would furnish me with the necessary instructions. Mr. Potts, upon seeing Mr. Barber there as a solicitor, said, he was very happy to see a professional man, he had not the pleasure of knowing Mr. Fletcher, and asked him who he was. He said he was a man of high respectability and large property, or something to that effect. A day or two after, Mr. Barber called again. He brought a paper which I have got. That was on his second call. A letter was produced, I think, on another occasion.

When he came in the first instance, it was explained to him what was required. He then brought the written statement, and, I think, this letter, with a burial certificate. This is the letter Mr. Barber produced on that occasion. The burial certificate was afterwards annexed to the document, as also the letter, but the clerk of the seat did not consider it necessary to remain, and it was disannexed.

Then the affidavit was prepared, produced to the clerk of the seat, again laid before the registrar, and afterwards sworn. This is the affidavit. I was not present at the swearing of that last affidavit that I am aware of. I have no mark I can speak to. It is not necessary for me to be present. A letter was written to Mr. Barber upon that. A certificate or certificates of baptism were also brought, I am not certain which. They were brought at the same time with this statement, by Mr. Barber. They were annexed to the affidavit.

*(A certificate of baptism of John Stewart, son of Robert and Jane, of the parish of St. Marylebone, on 26th of April, 1761, born on 11th April, was here read; also of Elizabeth Stewart, the daughter of Robert and Jane, on May 15th, 1763, born April 22nd.)*

*(The written instructions furnished by Mr. Barber were as follows.*

"Mrs. Stewart states, that she was informed of her brother's death through the kindness of an intimate friend of her late aunt's, who resided in New York, in America, who came over to Bristol with her in May last, of the name of Jones, in consequence of his having business

in London. He promised her that he would go down to Great Marlow and see her brother, and take a letter to him for her, which he did. On his return, he informed her that her brother had been dead ever since March, 1827. Mr. Jones called on her about a month since, and informed her that he was then going back to America, and she had neither seen or heard from him since. Mrs. Stewart was informed by her late aunt, that Mr. Jones was formerly a captain of a vessel trading from New York to Bristol, but that he is now a gentleman of independent property. Her late aunt, Elizabeth Stewart, with whom she (Mrs. Stewart) had been living at New York, had frequently told her that her brother John had about £700 in the sinking fund in the Bank of England, and also that he had money out on mortgage, which she has every reason to believe is true.")

**E. KEENE re-examined.**

Q. In the course of your different conversations with Mr. Barber upon this subject, when speaking of the prisoner Fletcher, did you ever speak of him by any other name than Fletcher?

A. Never.

A letter was written to Mr. Barber, and I should think an appointment was made through Mr. Barber, for the parties to come to be sworn to the affidavit. I remember their attending to be sworn, but I do not remember the day. I recollect an elderly person coming and Griffin. I think they came together. I do not remember whether or not Fletcher was present upon that occasion. I do not remember that Mr. Barber came in the course of the attendance for the swearing of Griffin and Mrs. Stewart. The administration was sent to Mr. Barber.

**Cross-examined by MR. GREAVES.**

Q. Did the old lady come alone at first, or who was with her?

A. Mr. Fletcher, I am quite certain. I am speaking of what passed while they were there, from looking at the bill of costs. I have a recollection of what passed in my own memory, without the document. I am quite certain of these two parties coming together. I have no recollection of the conversation that took place, except from the document, in that respect, because there was nothing very peculiar in it, further than giving instructions for an administration, on the first occasion. I have been speaking of what passed on the first interview, when Fletcher and the old lady came together, from my ordinary practice in all cases of administration.

I was present when Griffin was there. I cannot recollect whether I saw him sworn or not. I recollect the affidavit being explained to him. It was read over to him. He appeared thoroughly to understand it. He asked no question about it that I remember. It was read over by examination, Mr. Pott taking either the draft or engrossment, and one reading against the other. I was present when the old lady signed the bond. J. Powell, the clerk of the seat, is, in all cases, the attesting witness. There were many persons in the seats' room. A person named Jones was in the same seat. I cannot say that he was present at that time. He is a usual clerk, and his usual place is in that seat, during business hours.

**Cross-examined by MR. WILKINS.**

Q. About what age did this old lady appear to be?

A. She was an elderly lady, but I cannot say as to her age. She had on, I think, a dark cloak, if I recollect right. I cannot say as to her personal appearance. She was not very tall, she was a moderate-sized woman.

I did not see Mr. Barber until after the second affidavit was required. The bond had been prepared at that time, at the first proceeding.

I should certainly not have supplied a security for Mr. Fletcher if I had not regarded him as a respectable man. There was apparently no risk to any party, the sister being the only next of kin, and the only person entitled to property. All that, I learnt entirely from the representations of the sister or Fletcher; and from his appearance and those representations, I thought there was no risk in furnishing him with a security.

The obtaining letters of administration was an irregular business, a peculiar affidavit being required. As far as I could see, it was transacted in a proper manner. I did not go to Mr. Barber's office during any part of it, to my recollection. I do not know whether Mr. Pott did.

**Cross-examined by MR. JAMES.**

[Q.] Giving a bond is a mere matter of form, is it not?

A. No, it is not; I procured my own brother-in-law to execute it.

(Adjourned.)

Friday, April 12th.

THE QUEEN AGAINST BARBER AND OTHERS, CONTINUED.

**WILLIAM SMEE, Esq.** I am chief accountant of the Bank of England. In 1840 Sir John Rae Reid, Bart., was the governor of the Bank. I received written directions coming from him, to transfer certain stock, £51 Long Annuities. This is his order, signed by him. In pursuance of that I transferred a sum of £51 Long Annuities on the 20th of Oct., 1840. I have the transfer before me. The stock was transferred into the name of Elizabeth Stewart, of Southampton-terrace, Southampton-street, Camberwell, spinster. There is no number given. I made the transfer myself. E. C. Wilkinson is the attesting witness.

**Cross-examined by MR. GREAVES.**

Q. Do you know anything about who was the governor of the Bank at the time you are speaking of?

A. Yes, because I have the governor's order before me signed Sir John Rae Reid, governor. I know that he was the governor at that time, independent of that document.

**EDWARD CLOSE WILKINSON.** I am a clerk in the Long Annuities' office in the Bank. I am the attesting witness to this transfer of £51 long annuities on the 20th of Oct. on account of Elizabeth Stewart.

**Cross-examined by MR. WILKINS.**

Q. Have you the signature of Elizabeth Stewart there?

A. Not to the transfer.

**JOHN WELDON.** I am a clerk in the Will-office at the Bank. I keep a book called the taking-in book, which I have here. I have an entry of the 16th of Oct. 1840, made by myself. Letters of administration of John Stewart appear to have been left at the Bank for registration on that day

(*looking at the letters of administration*). I find on the back of these the mark of that registration by the Bank. It is "Bank Register, K. z., 73036". My initials J. W. Are at the bottom. An application for the restoration of the stock was also left at the Will-office. This is it. Here is also a burial certificate, two baptismal certificates, and a letter from Mr. Coxwell. I cannot say these papers were all brought at the time of the letters of administration, but they were subsequently produced. They were brought in about that time in relation to these letters of administration. This other document, which is pinned up with these papers, I should say came with them. It is not usual to keep letters of administration at the Bank after they have been registered. We return them to the parties on their producing a ticket to entitle them to it.

The letters of administration were returned on the 24th of Oct. It is customary for the person who gets back such a document, to sign a receipt for it. Here is the receipt for which was signed for that. (*the entry was. "Name? Stewart. Will or administration? A. Number? 170,658. When registered? 19th of Oct. When re-delivered? 24th of Oct., without ticket. To whom re-delivered? (Signed) W. H. Barber, 21, Tokenhouse-yard."*)

**WILLIAM JOHN DONALD.** I believe this "W. H. Barber" to be the signature of the prisoner Barber. I know him personally. I believe it to be his handwriting (*looking at a letter*). I believe this to be his writing. I have no doubt whatever of it.

**Cross-examined by MR. WILKINS.**

Q. Have you ever seen Mr. Barber write?

A. I cannot recollect having seen him write. I have a knowledge of his writing from paying his checks with his name to them.

**MR. WELDON**

**Cross-examined by MR. GREAVES.**

Q. It is not usual, is it to produce the bond for administration at the Bank?

A. I am not aware that it is.

**Cross-examined by MR. WILKINS.**

Q. Is this entry "Stewart A.," the number and date of re-delivery, all written by the same person?

A. No, "Stewart" is written by Mr. Rippon. The numbers are Mr. Smith's I apprehend. The 19th of Oct. is in my writing. The "24th of Oct. Without ticket" is Mr. Rippon's. That means either that the ticket had been lost or mislaid, and the administration restored to the party, and that memorandum is descriptive of the transaction. We sometimes restore the papers without a ticket, when the parties are known. We do not return them unless the parties are identified.

The process of identification is very short. We say, "You know the party to be the party mentioned in these documents?". It is signed by some person known to the clerks in the office. They are generally brokers, or brokers' clerks, or bankers' clerks. The entry with regard to the ticket was made on the day on which it bears date, the 24th of Oct. It was given up that day.

**JOHN BRADLEY RIPPON.** I am a clerk in the Bank. The word "Stewart" in this entry is my handwriting, the rest is in the handwriting of two other persons. The day of the re-delivery is mine, 24th Oct. I have no doubt that was the date of the re-delivery. The person to whom I delivered it no doubt signed that name. That is the practice.

*(The following documents were here read).*

"15th Oct. 1840. To the Chief-accountant at the Bank of England.

Sir, I respectfully request, that you will have the goodness to transfer into my name certain Long Annuities, amounting to £50 A year, or thereabout, now or lately standing in the name of my late brother, John Stewart, of Great Marlow, Buckinghamshire, gardener, and which I am informed have been transferred to the Commissioners for the Reduction of the National Debt. I should long since have made this application, but have been for several years in America. I only learnt the death of my brother on my return in May last. My brother died in March, 1827.

ELIZABETH STEWART, NO. 1, Southampton-terrace, Southampton-street, Camberwell."

A certificate of marriage, signed D. M'Pherson Session-clerk, between Robert Stewart and Janet Stewart, both of the parish of Callander, on 19th Jan. 1756.

A certificate of baptism of John Stewart, son of Robert and Jane, on 26th April, 1701, at St. Marylebone; also of Elizabeth Stewart, daughter of Robert and Jane, on 15th May, 1763, both signed Bryant Burgess, curate.

A certificate of the burial of John Stewart, steward to James Cranbourne Strode, Esq., on 19th March, 1827, at Great Marlow, Bucks, signed Thomas Tracey Coxwell, vicar of Great Marlow.

"To H. Barber, Esq., 21, Tokenhouse-yard, London, dated Marlow, Aug. 16, 1840.

Sir, I see on the gravestone of the late Mr. John Stewart (he age 65 years. I never heard of a will. I never had any papers, or anything belonging to him, in my possession.

T. T. COXWELL."

**MR. GRATTON [sic].** This paper is something like the prisoner Fletcher's writing. I believe it to be his.  
(read.)

"Mrs. Stewart states, that in or about the month of June, 1826, she received a letter from her brother, John Stewart, of Great Marlow, informing her that he intended to come to London on a certain day in that month, but was afraid that he should not be able to call on her as usual, as his time would be short; he therefore wished her to meet him in the Bank of England, as he had previously promised to make her a present the next time he came there.

She went to the Bank accordingly, in company with Mr. Griffin, when her brother presented her with £5, and he (her brother) ultimately agreed to, and did accompany her and Mr. Griffin home, and stay a short time, at No. 49, Mortimer-street, Cavendish-square, the same day."

**CHARLES HILL.** I am a member of the Stock Exchange. In 1840, my office was at 23, Threadneedle-street. I know Mr. Barber. I had seen him for two or three years, before 1840.

In Oct. 1840, he called at my office. I cannot recollect the day. He requested me to accompany him to the Bank, to identify him. I went with him to the chief-accountant's office, Bank of England. I there saw Mr. Gray the deputy-accountant, and a female dressed in dark clothing.

She was between forty and fifty, as well as my memory will serve me. To the best of my recollection, she was not far advanced in years, or feeble. I think she was not an aged person; but the time is too long since. She was not thin. To the best of my recollection, she was a bulky person, stout in width and breadth, and rather above the middle stature. I have no distinct recollection, whether she was pale or fresh-coloured. She was in black.

I did not observe any decrepitude about her. I think, she did not appear to have any of the infirmities of age. Barber introduced her to me as Mrs. or Miss Stewart. The usual document was then handed to me, with the words, "W. H. Barber, known by me;" which I signed. This is my signature. I do not know Mr. Barber's hand-writing.

**MR. DONALD re-examined.** This signature, "W. H. Barber," is Mr. Barber's writing.

(The order of Sir John Rae Reid, Governor of the Bank of England, was here read, directing William Smee, the accountant-general, to transfer to the account of Elizabeth Stewart, of Southampton-terrace, Southampton-street, Camberwell spinster, the sum of £51, Consolidated Long Annuities, for eighty years, transferred from the account of John Stewart, of Great Marlow, Bucks, gardener, to the account of the Commissioners for the Reduction of the National Debt, on the 11th of Oct., 1836; and also, directing £739. 10s., being the unclaimed payments on the said annuities, from the 10th of Oct., 1826, to the 10th of Oct., 1840, to be paid to the said Elizabeth Stewart. On the back was written, Paid, 22nd Oct., 1840, Elizabeth Stewart, spinster. known to me, W. H. Barber. Known to me, Charles Hill.)

**MR. HILL re-examined.** On the 24th of Oct., Mr. Barber called at my office, and gave me instructions to sell £51 Long Annuities, for Elizabeth Stewart of Southampton-terrace, Southampton-street, Camberwell, spinster.

At the latter part of the day, an appointment was made to attend and transfer the stock. I sold the stock in the meantime. At or about two o'clock, Mr. Barber called, and we went together to the Transfer-office.

The same female was introduced to me, as the person who was to transfer the stock. I have never seen any body since who, in my opinion, resembled that person.

The female transferred the stock in my presence. I gave this check to Mr. Barber.

*(This check was dated 24th Oct., 1840, on Lubbock & Co., for £652. 0s. 9d.; signed, Charles Hill).*

I afterwards discovered, that I had paid him £3. £3s. 9d. too much. I made that discovery by taking the Bank receipt to the dealer, to be paid for the stock. Instead of selling the stock at 12 3/4, it was sold for 12 13-16ths, the fraction was 1/15, 1s. 3d. for each annuity, which amounted to £3. 3s. 9d. On making the discovery, I went to my own office.

I afterwards went to Barber's, in Tokenhouse-yard, but did not find him. I then went to Lubbock's the banker's, and, on returning from thence to my office, they told me that the bankers had sent a clerk to say, the check had been paid, in gold.

At the latter part of the day, I told Barber that I had learnt the bankers said, it had been paid in gold. He observed, they were silly people, or country people, and were alarmed at the panic, that then prevailed (there were rumours of war with France). I inquired the address of Elizabeth Stewart. He gave it me. I wrote to her, and sent the letter by my clerk. It was returned. A day or two after, Mr. Barber repaid me the £3. 3s. 9d.

**Cross-examined by MR. WILKINS.**

Q. I believe you were a colleague of Mr. Barber's on the committee of the Southwark Literary Society?

A. I think not. We were both members of that Society. Mr. Barber was one of the committee. He stood high and respectable in society as far as I know. The members of the committee were chosen on account of their respectability. The committee is formed of some of the very first men in the borough of Southwark. I heard that Lord Brougham presided on one occasion. I was not present.

I do not exactly recollect whether I asked for Elizabeth Stewart's address, or whether Mr. Barber gave it me before I asked for it. I think if I were to see the female again, with the same attire, I should recollect her.

She was not very aged. To the best of my recollection she did not exceed fifty. I have seen no person since, resembling her. I saw Mrs. Saunders at the Mansion-house, and I now see Mrs. Dorey. I do not remember whether the female had a cloak on. I identified her at the sale of the stock.

**MR. ATTORNEY GENERAL.**

Q. On the second occasion you identified her?

A. Yes. The stock cannot be sold without the broker does so. On the former occasion, on my identifying Mr. Barber, Mr. Barber's identification of her was taken as sufficient.

I have no doubt whatever that the woman I saw on the second occasion was the woman I had seen before. I think if I saw her again it would bring her to my mind.

The address of Mrs. or Miss Stewart was on some of the papers. There must be a ticket drawn out, upon which the whole description must be given. If I wanted the address, I could not have obtained it without any difficulty. Persons very often change their residences half a dozen times. It did happen to be the same address. I did not know the stock had been transferred into her name so recently. When my clerk brought back the letter he said Miss Stewart was out. My instructions to him were to bring it back if he could not find the person at home.

**THOMAS HARDING.** I am a cashier in the banking house of Sir John William Lubbock and Co. I paid this check all in gold, as far as I know. The sum was £652. 0s. 9d. There might have been a mixture of sovereigns and half-sovereigns. It was weighed.

**RICHARD JAMES TILLOTSON.** I am a clerk in the public Drawing-office of the Bank of England. I have an entry of the 22nd of Oct, 1840. This is an order of the chief cashier of the Bank of England for the payment of £739. 10s on the Long Annuities for eighty years. It was

brought to me and I paid it. It is signed Elizabeth Stewart. I cannot swear that a female signed it. I have no recollection of the transaction beyond paying the money according to the practice, the party should put their name at the back.

**MR. DONALD re-examined.** These words, "Administratrix, 1, Southampton-street, Camberwell, Surrey" I believe to be Mr. Barber's handwriting. It reads, "Elizabeth Stewart, administratrix," &c.

**MR. TILLOTSON continued.** I paid £630 in Bank of England notes. I did not pay the remainder. It is the practice of the office for one clerk to pay the money, and the other notes. The notes I paid were four of £100, all dated 9th of March, 1840, Nos. 63460, 63461, 63462, and 63463; five of £20, all dated 5th of March, 1840, Nos. 93879, 93880, 93881, 93882, and 93883; ten of £10, all dated 3rd of Aug., 1840, Nos. 49088, 49089, 49090, 49091, 49092, 49093, 49094, 49095, 49096, and 49097; six of £5, all dated 1st of Sept., 1840, Nos. 19122, 19123, 19124, 19125, 19126, and 19127. I handed the order to Mr. Hilary to pay the remainder. We pay notes or cash at the desire of the person presenting the order.

**FRANCIS CHARLES HILARY.** I paid the remaining £109. 10s. In gold and silver.

**JOSEPH DERMER.** I am an in-teller of the Bank of England. I have a book to which I refer when I pay gold for notes. on the 2nd of Nov., 1840, I exchanged some Bank of England notes, in the name of Stewart, for gold. They were four £100 notes, three £20, eight £10, and six £5. I have not the numbers or dates. They amount to £570. I file them, and a clerk comes down, and receives them of me. When notes are exchanged for gold, we require the person's name and address to be put on the top of the note as on those produced. It is generally put only on the first note, but it is frequently put on more. We only require it on one. They are kept together.

**WILLIAM PALMER ORD.** In 1840 I was a clerk in the Bank of England, in London, [sic]. I am now in the Leeds branch. On the 2nd of November, 1840, I find notes to the amount of £570 were exchanged for gold. I took them from Mr. Durmer [sic], of the Teller's office. They had the name of Stewart in Mr. Durmer's book, and on the back of the notes. (*looking at some notes*). These are the notes that I took from Mr. Durmer. I have referred to Mr. Durmer's book, and find my initials to an entry there, showing that I obtained these notes.

**MR. GRATTON re-examined.** The writing, "Elizabeth Stewart, No. 1, Southampton-terrace, Camberwell," on all these notes, I believe to be Joshua Fletcher's. (These notes were four of £100, dated 9th March, 1840, Nos. 63460, 63461, 63462, and 63463; three of £20, dated 5th March, 1840, Nos. 93880, 93882, and 93883; eight of £10, dated 3rd. of Aug. 1840, Nos. 49089, 49092, 49093, 49094, 49095, 49096, and 49097; six of £5, dated 1st Sept., 1840, Nos. 19122, 19123, 19124, 19125, 19126, and 19127.)

**JAS. CRANBOURNE STRODE, Esq.** I formerly resided at Court-garden, Great Marlow. I had an uncle named William Strode, who lived at Niarn Inn Lodge, Northall,<sup>7</sup> near Barnet. He lived there in 1804. He had a gardener at time, named John Stewart. I knew a gentleman of the name of Von Hopkins, of Cobham, by name. I am not sure whether Stewart came from him to my uncle.

My uncle died in July, 1809. Sir Simon Le Blanc bought part of the estate of Northall, in 1811. Stewart remained there some time after Sir Simon bought the estate.

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<sup>7</sup> Actually Northaw.



In 1820 he came to reside with me as gardener, at Court-garden. He died in 1827.

I respected him, and a stone was put up to his memory in the church-yard. I often had conversation with Stewart.

He told me he had no relations, except a brother, who went away early from Scotland. I never heard him mention any other relation; and he had not seen him or heard of him for a number of years.

Stewart was himself a Scotchman. I could judge that from his dialect. After his death some papers of his came into my hands. Among them I found some stock receipts. I know Stewart's handwriting. This endorsement, "My own private affairs," on this paper, is in his handwriting. Within that paper I found these other papers. They were exactly as they are now, in this tin case.

**Cross-examined by MR. GREAVES.**

Q. Did you find that box yourself, or did one of your servants?

A. This tin case was given to me when I returned home. I was absent when Stewart died. I cannot recollect who gave it. It is so long since. I came home the day after he died.

**JOHN HUNTER.** I am the Session clerk of Canongate, in the city of Edinburgh. I think I am acquainted with the handwriting of William Lothian, the minister. He is dead. I have here the handwriting of Archibald Aitkin, one of the elders. I know his handwriting from this book, but not individually. He is also dead, and has been dead thirty or forty years. I do not know the handwriting of Alexander Crichton. He was an elder. He is dead. I did not know Mr. Lothian. He has been dead more than fifty years. There were no books kept by him. The public books in which his signature appears, have come into my hands. I have not become acquainted with his handwriting by seeing those books. I have not had occasion to refer to them, and to act upon his signature. This book is the minutes of the Kirk Session of Canongate, and is kept for the purpose of minuting the transactions of that body. I have never referred to them that length of time back. I have looked over it since this business. It is the course of business for the minister to sign these minutes. I have the minutes during the time this gentleman was minister. I have not, by looking at those minutes, acquired such a knowledge of his handwriting, as to be able to form an opinion whether it is his signature. I have looked at the books since this question has arisen.

Q. I want to know whether, looking at the minutes, and looking at that gentleman's handwriting, you can form any opinion whether that is his handwriting?

A. My opinion is that it is. I have been able to form an opinion from that source. on the 27th of May, 1782, there were two ministers of Canongate, the Rev. John Macfarlane and the Rev. William Lothian. Two persons, named Archibald Aitkin and Alexander Crichton, were elders at that time. James Brown was at that time the session clerk. He was not my immediate predecessor. He has been dead twenty or thirty years, or more.

**Cross-examined by MR. GREAVES.**

Q. Who is that book kept by?

A. The session clerk. I bring it from the Canongate. It is kept in my possession as session clerk. I knew some of the parties, from personal knowledge, in my infancy. I did not know the clergyman.

I must have been very young at that time. I did not know Macfarlane. I knew Aitkin and Brown. I am fifty-nine years old next August.

**COURT.**

Q. Does this contain an account of births, marriages, baptisms, or deaths?

A. No. They are kept in separate volumes. That is the record of the births. This is merely the transactions of the meetings of the kirk session.

**MR. ATTORNEY-GENERAL.**

Q. Who are the persons who attend the kirk session?

A. The two clergymen, the elders, and the clerk. Their duties, are various; each one has bounds appointed to him, to visit the poor, and attend to the business of the church, as to collections, and many other things. They have something to do with church discipline. They can remove a person out of the congregation. It is very seldom done, hut they can do so with improper persons. They also assist as dispensers of the sacrament.

The Kirk Session is a court from which there is an appeal to the Presbytery, from the Presbytery to the Synod, and from the Synod to the General Assembly. I knew Brown, but I cannot say he was session clerk then. I was very young. my father and he were very intimate.

**MR. STRODE re-examined.** All these papers were delivered to me in the tin case the night I came home. These Bank papers were not within the paper marked private. The papers inclosed within that envelope, marked "My own private affairs" were in the tin-case. He died early on Tuesday morning, and I came home on Wednesday night.

**JOHN HUNTER re-examined.**

Q. Is it usual for the minister and elders of the kirk session, when a person leaves a congregation, to give any certificate, so as to enable him to be admitted into any other congregation?

A. If they ask for it, it is given. It is usual. If they apply to be received into another congregation, it is usual to require a certificate from the congregation they have left. (*This document was not read.*)

**MR. STRODE re-examined.** I never saw Barber, or any of the prisoners till I was at the Mansion-house. I received this letter (*looking at it*) in Sept., 1840, and this is the answer I wrote.

**MR. DONALD re-examined.** I believe the signature to this letter to be Mr. Barber's handwriting, and the name of the person it is addressed to.

**Cross-examined by MR. WILKINS.**

Q. Did Mr. Barber bank at the Bank of England?

A. He did. His account was not always low, generally speaking. I cannot tell, the largest amount he had, without looking through the whole of his account. I do not know the handwriting of Mr. M'Namara, Mr. Barber's clerk.

Mr. Barber did not bank with us in Oct., 1840.

(*read.*)

Sept. 7th.

Sir,

I am instructed to apply to you on behalf of Mrs. Stewart, the administratrix of her late brother John, who was formerly in your service. As there was some property in the funds which belonged to the deceased, it is important that Mrs. Stewart should be possessed of the stock receipts, which, she understands, are in your possession. Will you have the goodness, therefore, to acquaint me if such be the fact, and whether you have any other documents which belonged to the deceased?

(Signed) W. H BARBER.

Sir,

Your letter, dated the 7th of September, arrived in due time, but as I was from home Mrs. Strode did not forward it to me. As she was in daily expectation of my arrival, it was not forwarded. In answer to your note of yesterday, the 11th of September, I beg to say I received it in its regular order. The papers I had of my late gardener's (Stewart's) are at my solicitors', Messrs. Pickering, Smith, and Thompson, Stone-buildings, Lincoln's Inn, where I beg to refer you for any explanations you may wish.

J C. STRODE.

**MR. WILKINS to MR. STRODE.**

Q. Did you receive more than one application from Mr. Barber?

A. I did not. I never kept the letter of the 11th. I do not recollect having it. Mr. Barber did not apply to me for any arrears of wages due to Stewart, or any one on his behalf.

**Cross-examined by MR. GREAVES.**

Q. Did not you cause a gravestone to be put over the deceased?

A. I did. The inscription put on it was by my direction. It was, to the best of my knowledge, correct. I think he appeared to be between sixty and seventy years old. I paid the expense of his burial out of his money. I know Mr. Coxwell, the vicar of Great Marlow. I never had a box of Stewart's in my possession. He lived with my uncle before he lived with me. I have seen him there.

**MR. ATTORNEY-GENERAL.**

Q. What was the inscription of the stone?

A. I do not recollect. I think his age is stated as sixty-five. That was from what I have heard from the time he had been away from Scotland, and hearing him talk about it. I understood from himself that he was sixty-five.

**EDWARD THOMPSON.** I am one of the firm of Pickering, Smith & Co. Solicitors, Lincoln's-inn.

We were concerned for Mr. Strode. I heard of the death of Stewart from Mr. Strode several times. I heard of it in 1840, and before.

On the 19th of Sept., 1840, Mr. Barber called at our office, (I do not remember his producing any letters of administration then, he did afterwards), he wanted me to give him information respecting the property of John Stewart, the late gardener of Mr. Strode, of Great Marlow. I believe these to be the letters of administration.

He said he applied on behalf of the sister. I said I knew there was no sister, from information I received from Mr. Strode, and I always understood Stewart had died leaving no relation whatever. He asked me to give him information of the property, and some stock receipts which were in possession of Mr. Strode, which he understood had been forwarded to me by Mr. Strode.

I said I had no instructions to give him any information whatever. I certainly should not be satisfied with the letters of administration. He said not with letters of administration? the Prerogative Court have been satisfied with the evidence, and granted letters of administration. I said it was easy to procure letters of administration from the Prerogative Court, and from information I had of Mr. Stewart having no relations whatever, I certainly should not give him information.

He said there was an affidavit produced with the letters of administration. I asked him to let me see that. He said the affidavit was filed. I asked him to let me see a copy of it. And that was the end of the first interview. He said he would call again and produce the affidavit or a copy. He said that the sister was a very old person. I do not know whether that was at that interview or a subsequent one.

I said, "Let me see the sister". He said she had come from America, as well as I can recollect. I do not recollect whether he said how long she had been from America. He said she had shortly returned from America.

I asked to see her. He said she was very infirm, and could not come, a very old person. He called on the 24th Sept and produced a copy of the affidavit, and there were no certificates attached to it.

I asked him for the certificates. He said they were filed, but the affidavit referred to them. I refused to give him any information. I said we were so perfectly satisfied there were no relations whatever of Stewart, we should be satisfied with nothing short of legal proof, at which he seemed very much surprised. my clerk (Andrew Bessant<sup>8</sup>) was not present at this interview. I believe he saw Mr. Barber afterwards. I did not see him afterwards myself. I believe I have stated all that passed. letters passed from our office with the prisoner.

**Cross-examined by MR. WILKINS.**

Q. Did you receive a letter from Mr. Barber on the 31st of Oct?

A. I cannot say the date, they are all in court.

**ANDREW SPENCER BESSANT [sic].** I am a clerk in the office of Pickering and Co. I remember being present at an interview between Mr. Barber and Mr. Thompson. I believe it was on the 24th of Sept. After that Mr. Barber called again on the 1st of Oct. following. I then saw him. He was to send a copy of the affidavit on the 24th of Sept. I think the copy was in my possession on the 1st of Oct. I referred to it in conversation that day. I told him it was not satisfactory, and pointed out where I considered it was not so.

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<sup>8</sup> In fact, Bessant.

I have not seen the affidavit since. I believe he took it away with him. I have not seen it for four years. I believe that is it (*looking at it*). I stated the defects in it, more particularly any omissions. I quite recollect pointing out to him that the meeting at the Bank ought to be better explained, it was not likely a woman coming to England should meet her brother, coming from a distance, at the Bank.

I particularly requested information as to where the deceased was born, and where he went to school. I also observed it was very odd the lady having come from New York to Bristol, and from thence to London, should get a person to take a letter to Marlow instead of going there herself. I said I wished to see the certificates. I recollect on that occasion Mr. Barber expressed himself very much dissatisfied that we did not think what he had already shown us was sufficient, and wished to know what would satisfy us.

I told him we certainly depended on any information the sister could give, a sister could give any information that would satisfy us, and I suggested that we might see the sister. I rather think he said she was indisposed. At all events there was an answer given that we could not see her.

I wrote on a piece of paper the particulars required. I objected at first, saying, "You ought to give us information without our suggesting it". I then put down two or three simple questions. He took the memorandum away with him, and said he would get the information we requested. I never saw him again, and believe he never called at all. I received this letter on the 31st Oct., and this is a copy of my answer.

**MR. DONALD re-examined.** This letter is Mr. Barber's handwriting.

(*Read*).

"21, Token-house-yard, Oct. 31, 1840.

Re Stewart, deceased,

Gentlemen,

I am informed your client, Mr. Strode, holds some monies of his late servant, and which were due to him at his decease. As it will be the duty of my client to get in all assets without delay, and to furnish a residue account to the Stamp-office, I shall be glad if Mr. Strode will inform me what amount of money, if any, was due to him, either for wages or otherwise.

W. H. BARBER.

Messrs. Pickering, Smith, and Thompson."

"Stone-buildings, Lincoln's-inn, Nov. 2, 1840

Re Stewart, deceased.

Sir,

In reply to your letter of the 31st ult., we beg to inquire who is your client, and by what right such client calls for information touching the affairs of the deceased. If your present

application be on behalf of the party whom you represent as being a sister of the deceased, we have only to say, as we have before told you, that we are not satisfied that she is the sister, and as such we are not disposed to pay any more attention to it than to the applications made by other parties claiming to be next-of-kin of the deceased.

Yours, &c.,  
PICKERING, SMITH, and THOMPSON.

Mr. W. H. Barber."

**MR. BESANT re-examined.** I afterwards received this letter:

**MR. DONALD re-examined.** This is Mr. Barber's handwriting.

(Read).

"21, Tokenhouse-yard, Nov. 4, 1840.

Re Stewart, deceased.

Gentlemen,

In inquiring who is my client, and by what right such client asks for information on this subject, it must surely have escaped your recollection that I took the trouble to produce for your inspection the letters of administration procured by such client, Elizabeth Stewart, the sister of the deceased, together with an affidavit in support thereof. Such an administration was not obtained until every query suggested by the registrar had been answered to his entire satisfaction. Subsequently to this, I have supported the claim of Mrs. Stewart so entirely to the satisfaction of the Bank Directors, as to induce them to order the transfer of stock which had stood in the deceased's names to that of my client. With all due deference, therefore, I submit she is entitled to have her claim regarded in a very different light to that of the other applications to which your letter refers. I submit also that she is fairly entitled to an answer to the inquiry contained in my last, without being driven to the expense and delay of a bill of discovery, or any other adverse proceeding.

Yours, &c.,

W. H. BARBER.

Messrs. Pickering, Smith. And Thompson."

**MR. BESANT re-examined.** This is my answer to the application of the 4th of Nov.:

(Read).

"Lincoln's Inn, Nov. 6, 1840.

Re Stewart, deceased.

Sir,

We have no desire that your client should be driven to the expense and inconvenience of filing a bill. Our only object is to be satisfied, on the part of Mr. Strobe, that Elizabeth Stewart is the sister of the intestate. When this is accomplished we shall afford every information in our power. At present, certainly, it appears to us, from the copy of affidavit, which is all that we have had produced, that she has not made out her relationship. We shall be glad to have satisfactory answers to the queries you required us to put down in writing when you were last here, and which we then requested you to procure for our information.

Yours, &c, PICKERING, SMITH, and THOMPSON.

Mr. W. H. Barber."

**MR. BESANT re-examined.** I heard nothing more of Mr. Barber after that. I recollect pretty nearly what the queries were. I put down where the deceased was born, where he went to school, at what age he left home, and which of his parents, if either or both, was at home at the time he left home.

**Cross-examined by MR. WILKINS.**

Q. I find here "this deponent refers to annexed certificates of baptism?"

A. Yes. I read that. I do not recollect Barber telling Mr. Thompson the certificates were filed. I was not present during the whole interview. If I had heard it I should have known I could go to the Prerogative Court to see them. I am not aware of the practice of the office. I believe our house had a trifling matter of business with Mr. Barber since that. It may be a year or a year and a half ago. He was concerned for a man against whom we brought an action for a small debt, which has never been paid.

**MR. BODKIN.**

Q. Did you understand that the original affidavits were filed?

A. It was understood to be an office copy. I am not aware of the practice of the Court. Mr. Barber did not say anything about that. There, was no office copy produced of the certificates.

**COURT.**

Q. Do you know whether they give office copies of exhibits?

A. In Chancery they do. I am not aware of the practice of the Prerogative Court.

**MR. SEATON re-examined.** We should give copies of exhibits, with copies, of affidavits, if asked for. I do not know whether they were supplied in this instance.

**JOHN HARDY.** I am seventy-one years old, and live in the parish of Crichton, in the county of Edinburgh. I have lived there almost all my life. I knew a person named John Stewart perfectly well. I first knew him upwards of fifty years ago. He worked with me as gardener to Mr. Patteson, more than two or three years. Patteson had three sons, John, William, and James. I do not know whether they are alive now. The son John was fourteen or fifteen years old when I first knew him. He went into the west country, to some nobleman. He was bred a gardener. John Stewart went from our parish to Phantassie, to live with a Mr. Rennie. I know nothing of John Stewart's family, I never heard him mention one.

**Cross-examined by MR. GREAVES.**

Q. Is not Stewart common name in Scotland?

A. Yes, very common. I never knew any other John Stewart. I heard that he went to Phantassie. I never saw him there. I did not see John Patteson after he left.

**SIR JOHN BAYLEY.** Q. Do you know when John Stewart went away from Crichton?

A. About fifty years ago. He got a certificate from the parish. I never saw it.

**JOHN WITHERSPOON.** I live at Kedlow, in Scotland, and know Hardy, the witness. I have lived at Phantassie, in the parish of Preston. It is upwards of fifty-two years ago. I knew John Stewart living there at the time I was there. He lived with Mr. Rennie, in the same service as I was, and under the same master. I did not know him at Crichton. He continued there twelve months. He was there that time. Phantassie is about eighteen miles from Crichton. I left him at Phantassie when I came away.

I understood from him that he had a brother named James. He never spoke to me about having a sister. I was very intimate with him.

I do not remember whether I saw him with a certificate or not, but he came with me to Haddington, on the road to Crichton, which is better than a mile from Crichton. I left him at Haddington. He returned the same day and we went home together. I got my certificate that day, and brought it back with me. (*looking at a certificate*) I do not remember seeing this. He did not show it me. After he left Phantassie he came to visit me for three days. He left the neighbourhood very soon after that. He was eight years older than me. I am seventy-four. He was about thirty years old when he left Phantassie. I never saw him in Scotland after he took leave of me.

**JOSEPH LOCKHART.** I was formerly a gentleman's gardener, and reside at Wimbledon.

I was acquainted with John Stewart, a gardener at Wimbledon. I first became acquainted with him between forty and fifty years ago.

He always went as a native of Scotland. I could not judge from his talk whether he was a Scotchman or not. I was born in Scotland. When I first knew Stewart he was living at Wimbledon, with John Shelly, Esq. He had a man named John Patteson, working under him at Mr. Shelly's.

I was intimate with Stewart. I saw him occasionally till near his death, but not very lately. I remember him with the two Mr. Strode, the uncle and nephew, one at Northall, and the other at Court-garden.

When he lived with Mr. Strode, he occasionally called on me at Wimbledon. I once saw John Patteson's father at Wimbledon. He called to see his son, when he worked for the same John Stewart.

Old Patteson and John Stewart always appeared to be acquainted. He saw John Stewart.

I never heard John Stewart mention his family but once. He once told me he had no relations living that he knew of, he had a brother that went to the Indies, and he had not seen or heard of him for twenty years, and he supposed he must be dead. He never told me he had a sister.



**Cross-examined by MR. GREAVES.**

Q. Were you ever at either of the Mr. Strode's in your life?

A. Never, nor ever saw John Stewart in their service, but I have seen him at my house when he was in the service.

**JAMES GUDGE.** I am clerk of the Journals of the House of Commons. This is the journal of the House for May, 1839. On the 27th of May, Mr. Charles Shaw Lefevre was appointed Speaker of the House. He was also Speaker in 1840, and has been so ever since.

**Cross-examined by MR. GREAVES.**

Q. Do you recollect whether the House was sitting in October, 1840?

A. I believe it has not sat so late as October for several years.

**JANE BIRD.** I live at Falmouth. I knew Mrs. Susannah Richards, who was married at Falmouth. It is more than thirty years ago. I saw her once in my shop, after she returned from Lisbon, she was then a widow. I do not know the prisoner Dorey. Mrs. Richard's children were young when she left. She had three daughters, Susannah, Lydia, and Georgiana. I forget what Mrs. Richards' name was before she was married. Her father was a soldier when I knew him. I forget his name, but should know it if it was mentioned. It was Crene.

**Cross-examined by MR. GREAVES.**

Q. How long did you know her father?

A. I only knew him by seeing him in Falmouth. I cannot say how long, he was there for years.

**Cross-examined by MR. PHINN.**

Q. Do you know what regiment he belonged to?

A. No, he was a pensioner.

**THOMAS GRIFFIN.** I am a tailor by trade. I have come here from jail. I lodged in Poland-street, Oxford-street, about a dozen years ago. I there became acquainted with a person named Saunders, his wife and children. I knew Mrs. Dorey while I lived there. Her name was then Georgiana Richards. I knew her mother, she lived with them there. There were four children, I believe. They lost one of their children while there. My wife laid the child out. That was the commencement of our acquaintance.

Saunders and his family left the apartment before me. The Richards's went with them. They all went together. I afterwards left the lodging myself, then went to Gilbert street, then to 31, Duke-street, Grosvenor-square, and then to 34, in the same street. I lived there in 1840.

Georgiana Richards (now Mrs. Dorey) called on me there. I think it was in the early part of the year, or perhaps April or May. I cannot say exactly. She asked me to do a favour for her mother. I asked what favour it was, if it was anything respecting money affairs I must decline doing it. She said it was merely to become a bondsman at the Stamp-office, respecting some property her mother was going to recover of a brother of hers, who had been dead some years, over in Berkshire; she had not been able to recover the money for want of means of doing so, that the brother had been dead thirteen or fourteen years, and if I was agreeable she would let me know

when the document was ready for me to sign. I agreed to do so. I told her I could not afford to lose my time. She said she would pay me for the time I lost in attending. She said she would let me know when she should want me, when the paper was ready to sign.

She said the brother of her mother had been living as steward and gardener with a gentleman in Berks, but I do not recollect that she mentioned the name of the place.

After this conversation, I received a message, in consequence of which I went to St. Paul's churchyard, and at the corner of Paul's-chain<sup>9</sup> met the old lady, Mrs. Richards, Mrs. Dorey's mother. A gentleman was with her. Mrs. Richards said, he was her friend who had advanced the money for her to recover the property. It was the prisoner Fletcher.

I went with them both to the door of the Proctor's Office. Fletcher did not go into the office, I believe, at that time. I and the old lady went in. We went from there to the Prerogative Office, and I there signed a bond.

After I left the office I received a sovereign from the old lady, and we parted.

This is my signature. (*looking at the bond*)

About a fortnight after, I received another message, in consequence of which I went again to the corner of Paul's-chain, and met the same gentleman and old lady. We went to the proctor's office together again (previous to that, Mrs. Dorey had called on me to go to meet her mother at the same place again, to complete the business).

We went to the proctor's office. I think Fletcher went with us. I was in the outer office at first, and while there another person came. I did not know who he was till the old lady said it was her solicitor.

It was the prisoner Barber. This was not in the presence of Barber or Fletcher. She told it me quite privately.

Mr. Barber spoke to the proctor's clerk, and then went into the inner office. I was in the outer office with Mrs. Richards.

Barber did not remain in the inner office more than two or three minutes. After that, I went into the inner office with Mrs. Richards, and put my name to a paper. I think it was read over to me before I put my name to it (*looking at an affidavit*). I am not certain this is the paper. This is my signature. I signed this at Mr. Potts'. I then went over to the surrogate's, the old lady with me. I think I was sworn to the truth of this paper. After I had sworn and signed it, I received a sovereign from the old lady, and a shilling to ride home with.

About six months after that I received a letter enclosing another from Mrs. Stewart. I had observed that the old lady had subscribed the bond as Stewart, and not as Richards. She gave me a reason for that. Fletcher was not then present.

I took no notice of the first letter. It was from the Stamp-office. I received a second and third, I believe, in consequence of which I went to Mr. Potts. I saw Mr. Potts's clerk, and received information from him.

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<sup>9</sup> <https://www.british-history.ac.uk/old-new-london/vol1/pp262-274> Paul's Chain is so called from a chain that used to be drawn across the carriage-way of the churchyard, to preserve silence during divine service.

I went to enquire after Fletcher, and ultimately got an address which led to Southampton-terrace, Camberwell, and there left a message for Fletcher. I went to an address where I expected to find Mrs. Richards, and she had left. It was in the same place as Mr. Fletcher was living, Southampton-street, or terrace. I think it was terrace. I enquired there for her as Mrs. Stewart. I wrote to her two or three days after this, and two or three days after, Mrs. Dorey, (then Miss Richards,) called on me, and said she called in consequence of a letter she had received from her brother-in-law at Bristol, Mr. Saunders, about some letters which I had for his mother. That was the Stamp-office letters.

I told her I was very much surprised to find the business was so very much neglected respecting the payment of the stamp-duty, which I was answerable for. She told me she would forward the letter to the attorney, who had the business to do for her, and I should have no further trouble about the matter.

She said she was lodging in Dean-street, Soho. I afterwards called in Dean-street, and saw Mrs. Dorey. She told me the letters were forwarded to the attorney, and she believed the business was settled.

I afterwards got another letter from the Stamp-office, and went again to Dean-street. In consequence of information I got there, I sent a message to No. 45, Oxford-street, and in consequence of the answer I got, I went myself next day to No. 45, Oxford-street, and saw Mrs. Dorey. She was then married.

She wished me to take the letter to the attorney, who, she said, was Mr. Barber, Bridge-street, Blackfriars. I went, but did not see him the first time. I went again, I think the next day, and saw him. I told him I had come respecting a letter I had left the previous day with his clerk. He told me he was then in treaty with the Stamp-office respecting the duty being paid, and I should hear no more about it. If I did hear any more about it, I should forward the letter to him if I got it from the Stamp-office. I never received any more letters. I received £10 from Mrs. Dorey for what I had done.

Q. Do you remember seeing this paper (the draft of an affidavit with "approved" written on it) and putting your name to it, before you were taken to the Prerogative-office to be sworn?

A. This is my signature to it. I dare say it was read to me before I put my name to it. It was read to me in Mr. Potts office.

Q. Were the contents of the affidavit to which you were sworn, at far as you were concerned, true or false? did you know the people for the length of time you state you did?

A. I did not. I do not know that it was read over to me. not the whole of it, distinctly.

**Cross-examined by MR. GREAVES.**

Q. On your oath, was not the whole affidavit read over to you by Mr. Potts?

A. I will not take upon myself to swear it was not, certainly. I will not say it was or was not. I think if it had I should not have signed it, if I had understood the contents of it certainly not. I do not at present recollect any of it being read. I think it was most likely read over to me. I thought I was going to complete the business commenced previously at the Stamp-office. I knew I was sworn. I dare say I was sworn to the truth of the contents of the affidavit. I ought to have known better. I

was sworn to the truth of it, no doubt. If I had known what was in it I certainly should not have signed it. I took the oath without giving it a serious consideration. I did it in consequence of being told it was to complete the business previously begun. I certainly swore to the truth of the contents of an affidavit without knowing what they were. I believe in a state of future rewards and punishments.

**Cross-examined by MR. PHINN.**

Q. How long before you moved from Poland-street did the laying out of the body occur?

A. About six or eight months, I believe. That led to considerable intimacy between me and the family of the Richards. I saw very little of Mrs. Dorey. She was chiefly out. She appeared to be an obedient child to her mother. I had not heard the Richards talk of property belonging to their family which had been lost before I moved from Poland-street. I do not recollect hearing them talk of property at Lisbon which had been lost. I thought this a mere matter of form. I received the £10 three or four months after I was at the Prerogative-office. I believe she said the money came from her mother.

**JOHN HAWKES GEM.** I compared this copy with the marriage register at Falmouth parish church. I also compared this with the register of baptism. They are correct. (These were a certificate of the Marriage of Thomas Richards and Susannah Crene at Falmouth on the 5th of May, 1785, and the baptism of Georgiana, daughter of Thomas and Susannah Richards, at Falmouth, on the 23rd of April, 1802, born on the 15th of March, 1802.)

**FREDERICK WILLIAM POTT.** I am a proctor. Mr. Keene is my clerk. I had no previous acquaintance with Fletcher before this business that I am aware of. Mr. Keene chiefly attended to it.

**Cross-examined by MR. GREAVES.**

Q. Did you read over an affidavit to Griffin?

A. It was read over in my presence. I was present as the notary when they were sworn. This is the draft of the affidavit of the 31st of July. There is no doubt that was read over at my office. The affidavit itself was also read over. I examined it with the clerk. I had the draft and the clerk the original. Griffin was there at the time.

**Cross-examined by MR. WILKINS.**

Q. I believe Mr. Barber was not called to your office till late in the transaction?

A. No; all the preliminary arrangements had been transacted before he came. The affidavit, which I presumed would be sufficient, was made. I was not present when instructions were given for it. I do not conceive I saw Mr. Barber more than once. I then considered him simply professional.

I have no doubt the certificates produced were annexed to the affidavit filed in the Prerogative-office, but I have no recollection at this distant period. I recollect there was some certificates annexed and filed with it.

**MR. ATTORNEY-GENERAL.**

Q. Was the only reading over of the affidavit a comparison of the draft with the fair copy?

A. I have no doubt the affidavit was read two or three times. The reading, I have spoken of, was for the purpose of comparison, and, at the same time, that the witnesses might thoroughly understand what the affidavit was that they were about to make, the affidavits were read to the witnesses before they went to be sworn. I do not recollect any reading, except the comparison. I do not recollect it, it is so long since. It is the invariable practice to read over affidavits to persons who are to swear, and, as the affidavit had been revised by the registrar, I am certain it was read over to him before it went to the registrar. It is the course of my office, that it should be so. The draft went to the registrar. I am certain the draft was read to him before it went to the registrar. I was not present, but it was the invariable practice. I think it went to the registrar two or three times.

Mr. Barber came to me, in consequence of the difficulty of getting it through.

**EDWARD PARKER WOOLFF.** I have acted as solicitor to the female prisoner on this charge. This statement is in her handwriting. I communicated the statement to Messrs. Freshfield's office, by desire of Mrs. Dorey herself. She had some time before expressed great anxiety to make a statement, and put the prosecutors in possession of all the facts she knew.

*(The following extract from the statement was here read:)*

"It is now about fourteen or fifteen years since I first became acquainted with the prisoner Fletcher, who was then living in the London-road, and practising as a surgeon, having a chemist's shop there; I was then residing in Portland-street; I cannot speak with certainty of my age; to the best of my belief, I was about eighteen or twenty; both Fletcher and his wife expressed a great partiality for me, and I became a frequent visitor at their house.

They introduced me to a Mr. Stokes; and represented him as a gentleman holding a situation in the Bank of England. Some time after my intimacy at Fletcher's, Mr. Fletcher and Stokes solicited me to go to the Bank; they said, if I would only sign my name and address for them as a bondswoman, they would and did give me £50; I wrote more than signing my names and went to the Bank, I think more than once, with them both, and to the Commons'; I did not understand the business at all; Fletcher and Stokes took the money in their possession, that was paid at the Bank, and afterwards went to an inn, with a Mr. Pizey, (or Pizley,) who acted with them at the Bank, Mrs. Fletcher, and myself; after a long conversation between Fletcher, Stokes, and Pizey, the latter left us; we then got into a coach, and returned to Mr. Fletcher's residence, in the London-road. I gave the money I received from them, to my mother; I was at that time living with her, also my sister Mrs. Saunders, and her husband; neither of them knew that I had any money at all given to me by Fletcher; I remained on terms of friendship with [sic] Fletchers, for some time; I cannot speak of dates with any certainty, but I know it continued up to the first Christmas following the trial Mr. Fletcher induced me to enter against Mr. Taylor, for breach of promise of marriage.

After exchanging visits with them, Mr. and Mrs. Fletcher said to my mother and myself, they could do much better for us than my being in the Pantheon. On our inquiring how, they said that Mr. Fletcher had a friend in the Bank of England that enabled him to get money, and he could get some for us; we again asked, in what manner, but they did not explain, beyond Mr. Fletcher observing to my mother, that if she would place herself under his instruction and direction, he would do well for her, and asked her if she would do as he wished in, every thing; she said she would, after Fletcher saying he would guarantee that she should do nothing but what was right; Fletcher, after this, explained what he meant by

saying there were a great many sums of money in the Bank of England without any claimants, which was in the hands of the Commissioners, and as there were no relatives left to claim it, it belonged as much to the public as to them, therefore he would represent her as a relation to some person deceased, who had left money unclaimed, and one of the clerks, who stood high in the Bank, would supply him with all the information requisite to take the money; Fletcher then mentioned the name of Stewart, and said, that a man of that name had been dead some years, and left a sum of money, which by my mother being represented as Stewart's relation, could be easily obtained, but that she must place herself entirely under his direction, and leave her home for a short time to go to a lodging which he would prepare for her; my mother assented, and promised to do as Fletcher directed.

He asked, if I knew of any friend that would take care of any letters that might come through the post, directed to a Mr. Jones; I mentioned Miss Hawkes, and afterwards asked her, if she would take care of such letters, if directed to her care; she said she would, and the letters she brought to me, I gave, unopened, to Mr. Fletcher; I do not, or ever did know, their contents; I went to. The Bank of England with Mr. and Mrs. Fletcher; Mrs. Fletcher waited with me in the Rotunda, while Mr. Fletcher went to look for his friend; whilst he was gone, the gentleman passed us; when Mr. Fletcher returned, Mrs. Fletcher told him Mr. Christmas had passed us, and we pointed to the office he went in; Fletcher went after him; after being absent some time, he returned, and we left the Bank together, Fletcher observing, I might be sure the gentleman I had seen would not risk the high situation he held, by giving information for him (Fletcher) to act on, if it were not legal.

Fletcher took a lodging for my mother, at a shop in Southampton-place, (or terrace) Camberwell, in the name of Stewart, and my mother went and lived there in such name, and I, by Fletcher's direction, visited my mother as her niece.

He said, he would not do any thing for me, if I did not give up my business in the Pantheon; that if I would do so, he would establish me, with his daughter, in some first-rate business at the West-end; I consulted with my mother about it, and she thought it best for me to do as he wished; therefore, I disposed of my stock in the best manner I could, and quitted the Pantheon, relying solely on Mr. Fletcher's promise of doing better for me.

To revert to my mother's case, Fletcher expressed his regret at not having a person at command, who would say, that he or she had for a considerable time known my mother as Miss Stewart, and sister to the deceased, and, in other respects, to establish my mother's identity as such; on my asking him how he did not know of such a person, he said the fact was, he had employed all the persons he could in that way; that during the period of our not being on friendly terms, he had two rich cases, in one of which he was the principal, and, in the other, he had only a share, but that he realized a large sum of money by them; that a man named Briggs, and his wife, were the parties employed to take the cases; Fletcher said he had taken lodgings for Mary Briggs the wife, and mentioned those cases, to assure my mother that she was not endangering herself in any way.

On my mother saying to Fletcher she knew a poor man, a tailor, that was much reduced in circumstances; he said, tell him you will give him £10 to identify you as Miss Stewart, and sister to the deceased Stewart. He (Fletcher) wrote out an account for my mother, to make herself perfectly acquainted with, and desired her to give it to Griffin after she had done so, that he might know what to say as to the particulars of the matter; at the same time, he said, she was to strongly impress on the mind of Griffin a belief, that Stewart was my mother's family name.

Mr. Griffin lived in Duke-street, Grosvenor-square; my mother subsequently saw Griffin, the man now in custody on this charge, and made the proposition to him, which he accepted; she told Fletcher, that Griffin was quite willing to the proposal; he (Fletcher) then said, that was all he required, as Mr. Barber and himself would manage all the rest; I cannot say how long the case was in hand; Fletcher was fearful my mother would not live to go through the business; he took her medicine nearly every morning; she was then seventy-one or seventy-two years of age; I do not know of any other inquiries made, respecting the case, but those I have stated. The money was obtained, and Fletcher gave my mother between £400 And £500 for her trouble; I heard nothing further of the matter, except that the legacy duty was not paid, although it had been invested in the hands of Barber, the solicitor, to do so at the time. An official communication was made to Griffin, some time after, from Somerset House, upon which he came to me to know what to do; I said he had better take it to Barber, the solicitor; I gave him half-a-sovereign for his loss of time.

Previous to my mother quitting the lodgings at Camberwell, Mr. Fletcher said he should not consent to my mother's returning again to Rathbone-place; therefore, much against her inclination and my own, I took a lodging in Tottenham-court-road; I do not recollect the number; it was a carver and gilder's shop, on the right-hand side of the road from Oxford-street; I am the only person that visited her, while she remained there; she was so unhappy, I told Fletcher I should have her home; he reluctantly consented, after she had been there about a fortnight or three weeks.

In Stewart's business, I gave to Mr. Griffin ten sovereigns; I took them to his lodging in Duke-street, and gave them into his own hand; five from Fletcher, and five from my mother. Soon after this, I removed from Rathbone-place, to live in Tottenham-court-road; the Fletchers were then living in Southampton-place, Camberwell; I spent much time with them; he was our only friend and adviser; he frequently said he interested himself as much in my welfare as he could do for his own daughter."

**MR. GREAVES to MR. WOOLFF.**

Q. When was it you sent the statement?

A. I believe it was the end of Feb., the 28th I believe.

**MR. BODKIN.**

Q. Is this the letter you sent with it?

A. Yes.

**MR. GREAVES.**

Q. Did not she want to be admitted as an accomplice, to give evidence?

A. She was in hopes that by furnishing the particulars to the prosecution it might prove of advantage to her I believe. That is a deduction of my own from conversation I had with her.

**MR. ATTORNEY-GENERAL.**

Q. I do not know whether you know that any caution had been given to her?

A. Oh yes. I had cautioned her. I believe a caution had been given to her by the visiting Magistrate in my presence. I had several interviews with her before the statement was furnished, and she insisted on its being furnished.

**Cross-examined by MR. WILKINS.**

Q. Do you mean to state to the best of your belief she was cautioned before she made any statement?

A. Yes. She was certainly not asked for the statement before she made it to my knowledge, nor in my presence. I do not know that she was asked to make a statement by a Magistrate of the City before she did so. In what I have said I have acted on the instructions I have received. I was so instructed by her.

**MR. ATTORNEY-GENERAL.**

Q. Were you present when any thing passed in the presence of the Lord Mayor on that subject?

A. Yes I was, and in the presence of Mrs. Dorey. The Lord Mayor entirely repudiated it. He denied it.

**WILLIAM CHRISTMAS.** I was formerly a clerk in the Bank, and have been so for fifty years. I was suspended about two months since.

My situation in the Bank gave me the means of knowing about the unclaimed dividends and stock in the Bank. I had some communication with the prisoner Fletcher on the subject of disclosing to him any particulars of that stock. I cannot say precisely to the time. With respect to the prosecution now before the Court, in the name of Stewart, I think it must be between three and four years since.

Q. Did you communicate the particulars of the annuity standing in the name of John Stewart?

A. Unfortunately for myself I did. After the stock was transferred and sold I received some money from Fletcher. I cannot charge my memory exactly how much. There were other occasions upon which I received money from him. Whether it was on that occasion £50 or £100 I do not know. It was one of the two. It was in gold. My mind has been so distressed I cannot speak with certainty.

**Cross-examined by MR. GREAVES.**

Q. Pray, did you know it was contrary to your duty to communicate anything about it?

A. Most unhappily for myself, I did. my communication about what passed with Fletcher has been principally with Mr. Freshfield. I made no communication to any one else. I did not mention a word of it till after Fletcher was in custody. I think it is more than a month ago that I communicated to Mr. Freshfield. I think Mrs. Dorey was in custody before I communicated it. I believe so, but I cannot speak positively to the time.

**THE RIGHT HON. WILLIAM MAGNAY, LORD MAYOR.** I acted in my capacity as Lord Mayor when the prisoners were under charge during several examinations. I remember the occasion when Mr. Wilkins appeared on behalf of Mrs. Dorey. From instructions which he received, certain observations were addressed to me, as having had a private communication with Mrs. Dorey. In consequence of what fell from Mr. Wilkins on that occasion, I thought fit to state publicly what I knew on the subject.



There is not the slightest truth in the suggestion that I had sought to procure any statement from any party on the subject matter of this trial. I said that publicly to Mr. Wilkins, and he in the handsomest manner apologized to me for having been betrayed into stating it.

*(The bond was here read, and was for £300, dated 31st July, 1840, for the due administration of the effects of John Stewart, gardener, Great Marlow, signed Elizabeth Stewart, John Gregory, and Thomas Griffin.)*

(Adjourned.)

Saturday, April 13th, 1844.

THE QUEEN AGAINST BARBER AND OTHERS, CONTINUED.

**MR. WILKINS** called the following witnesses.

**JAMES MORRIS.** I am gardener and beadle of Nelson-square, and have been so eight years last July. I recollect Mr. Barber residing in the square more than seven years. I think he resided at No. 52. The brass plate now produced was upon that door till within the last year or nine months. It was taken off when the house was under repair. (*"Mr. W. H. Barber, solicitor" was on the plate.*)

I knew some of his clerks. Mr. Barber held his office there during the earliest portion of the time. I know a clerk named Peckham very well indeed. He came to the office every morning, I believe. If there had been any inquiries for Mr. Peckham, I should immediately have gone to Mr. Barber's to seek him.

**ROBERT PECKHAM.** I am now managing clerk to Mr. Bramhall [sic<sup>10</sup>], a solicitor, No. 5, Verulam-buildings, Gray's Inn.

I was managing clerk to Mr. Barber. I went to him on 10th Feb. 1837, and continued in his employ up to the January of this year, about three weeks after his arrest.

I had access to Mr. Barber every day while he was in custody, during that three weeks.

I remember the parties from the Bank coming to see his papers. During that three weeks no alteration whatever had been made as to the position of these papers, with the exception of looking out such letters as were advised by Mr. Barber's attorney, and copies being made of them, all of which have been produced to-day.

I remember the case of Elizabeth Stewart being brought to Mr. Barber's office. At that time there were two clerks in the office directly employed by Mr. Barber, and a messenger. There was a gentleman having offices in the same house, whose business Mr. Barber had purchased, and whose clerks' salaries were also paid by Mr. Barber, and who had to do his business, when required. I think there were five or six besides a messenger.

This business of Stewart's was conducted in the office precisely in the same open way in which other business was done. A clerk who managed the business kept a diary of the transactions carried on there, and Mr. Barber also. I have carefully looked over that diary, in reference to this transaction, to see what entries were made by myself. This is the diary. Here is an entry of 25th August, 1840, in my own handwriting. I made it at Mr. Barber's dictation, or from being told by

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<sup>10</sup> In fact, Thomas Elisha Bramall.

him to what effect to write. At the time I made that entry I was perfectly acquainted with the events of which it is a short history, and if Mr. Barber gave the names wrongly, in the hurry of dictation, I altered them as the fact was.

I very well remember Mr. Fletcher attending at Mr. Barber's office that day. I did not hear what his errand was. This diary is for the year 1840, and during that year it was always on Mr. Barber's desk, ready to be entered daily. It was open to the inspection of everybody. It was a book of access and reference.

Mr. Bircham was not a partner at that time. It was open to his inspection when he became a partner.

I observe two handwritings of clerks in the diary, and that of Mr. Barber. James Macnamara is the other clerk.

I cannot speak as to the number of times Mr. Fletcher attended at Mr. Barber's office, between 25th August and 23rd Oct. I saw him coming frequently, sometimes daily, but I took no particular notice.

He had been a client of Mr. Barber's since the autumn of 1838, or the spring of 1839. but with reference to Mr. Fletcher's calls, I should observe, a call-book is kept in the office, by which, the moment a gentleman appeared in the office, his name is put down by a clerk, and that book is here. Every time any client called his name would be immediately entered by one of the clerks. That was a task generally performed by Mr. Macnamara.

During the time I was in the office, Mr. Barber transacted very considerable business for Mr. Fletcher. It was not so extensive, but it was rather heavy business. Actions for demurrage and freight, mortgages, rent-charges, and various things. It was what we call the superior business of a client.

I was on very intimate terms with Mr. Barber, during the whole time I was his clerk. He treated me more as a son than a clerk. I never in my life saw Mr. Fletcher in his company, except at his office. He was so proud, that I had particular instructions never to assume any familiarity. I never discovered or saw any familiarity between Mr. Barber and Mr. Fletcher. There was a greater coldness towards Mr. Fletcher than any other client. Mr. Fletcher was rather repulsive in his manner, and Mr. Barber did not court him.

I remember Mr. Barber going to Great Marlow very well indeed. I did not go with him. I made an entry in the diary at his dictation, a day or two before he went, of his intention to go, and I know of his absence from the office on that day. I remember the months of May and June preceding the 1st of Oct.

Q. Now during the whole of those two months was Mr. Barber absent for a day from the office?

A. On one occasion he and I were at Rochester together, with the exception of that one day he certainly was not absent from the office during the whole of those two months.

Mr. Barber's effects have been sold since this, both at his private house and his office. They were sold to defray the rent. Mr. Bramhall has conducted his defence gratuitously. Several other friends have supplied funds to pay counsel's fee.

**MR. ATTORNEY GENERAL.**

Q. When did you first go to Mr. Barber's?

A. On the 10th of February, 1837. I was never articled to him, I was to have been. I continued in his service from the 10th of Feb. up to Nov. 1839, when I left him to go into a large office for two months. I then returned to him, and have been with him ever since. I think it was in Nov., 1839, that I left him, and went into the office of Taylor, Sharp, and Field, Bedford-row. I cannot give the precise date, I think it was about the 16th of Nov. I returned, I think, about the 19th of Jan. 1840. I have been in his service ever since, down to the time of his apprehension, without any intermission.

I know a person named Hartung, a German. At least, I did know him when he was a client, I think about 1839. I called on him at the time I was at Taylor, Sharp, and Field's.

I had some dispute with Mr. Barber's servant, in consequence of slamming a door. He gave me some unkind word, and I left him, this situation offering on the same day. The servant's name was Charlotte Gallard, I think.

Mr. Barber is unmarried, he never has been married that I am aware of, I never heard of any wife, certainly none ever lived with him. He had no wife.

Q. During the time you were absent from Mr. Barber's, did you not say to Mr. Hartung that if you chose you could hang Mr. Barber?

A. Oh, no. I heard, through Mr. Barber, that such a statement had reached his ears, I was disgusted at it, and immediately wrote to Mr. Freshfield, emphatically denying it, that it was a gross falsehood. I believe somebody had told Mr. Barber. I heard it at the Mansion-house from Mr. Barber. I most certainly swear I did not make that statement.

This is not the only transaction with Mr. Fletcher relating to the proving of wills. There are several others relating to the same business as the wills, relating to unclaimed dividends. There have been three of these transactions besides this, which form the subject of other indictments. There was another before, I think, or very nearly contemporaneous with this, which has not been made the subject of an indictment. Those were the only ones that I am aware of.

Oh, by the bye, I beg your pardon, there was another; there was one in which Mr. Bramhall, my present employer, received about £1,000 from unclaimed dividends, for which he was very thankful. That was an affair between Mr. Fletcher and Mr. Barber. Mr. George<sup>11</sup> Robins, the auctioneer, was the party who died, leaving the dividends unclaimed.

Altogether there were three transactions besides this, forming the subject of an indictment. There was one, I think, before, or if not before contemporaneous with these certainly; and there was another, Robins' matter. I do not know at this moment of any other. That is six, I think. Mr. Fletcher was concerned in all those.

There were others besides, in which Mr. Fletcher has not been concerned, I believe. I do not know when they began. I mentioned that because you were so anxious in your inquiry, and Mr. Barber's

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<sup>11</sup> In fact, John Robins.

instructions are, that every thing should be stated. He has not given me instructions as to the manner in which I should give evidence.

I have been instructing Mr. Wilkins in this case. Mr. Bircham became a partner either on the 17th or 21st of Dec, 1841.

Mr. Barber generally came to the office of a morning about a quarter past nine. He was generally there before anybody. Up to the latter end of Nov., his office was at his residence, 52, Nelson-square. Just at the time of my leaving him, he changed his office to Tokenhouse-yard. When I returned to him at the beginning of 1840, his office was in Tokenhouse-yard. He continued to reside at 52, Nelson-square, up to his apprehension. His office hours at Tokenhouse-yard were from half-past nine; he staid till half-past five, himself, and I was generally there till half-past six.

I lived with my father at that time, on the Buildings, at Apothecaries Hall. He has been there thirty years.

I did not live in Nelson-square, but I used to be there about three nights a week, and spend the evening with him; to read and write, and enter up his diary.

He had no family at that time that I know of. I have continued my intimacy with him up to this day. He has, I think, two children, but I do not know that they are his children, by any means. I never heard him say so, it was only from popular report I heard it. They never lived in the house with him. I was not aware of his having two children; it was too delicate a subject for me to talk to him about. I am perfectly aware that no birth ever took place in his house.

#### **MR. WILKINS.**

Q. Except as to popular report, did you ever know Mr. Barber had any children?

A. By no means. My father is the head assistant in the warehouse of the Apothecaries' Company. He has been on the Company's buildings I think about thirty years.

Mr. Hartung is a client who got very angry with Mr. Barber, because he sent him in rather a heavy bill. He has often said he would like to hang Mr. Barber. I never said I could hang him.

There were all together six of these transactions. The one not the subject of an indictment was a claim of about £200 by the representatives of a person named Smith, in which Messrs. Lawrence and Blenkiron, of Bucklersbury, were concerned for the parties. Mr. Barber merely gave the information through Mr. Fletcher.

The other matter, which we called in the office "Robins's matter," was a claim to about £1,500 unclaimed dividends, standing in the name of Mr. George Robins. Mr. Barber communicated with the trustees, and I believe the property was recovered. Mr. Bramhall has frequently told me so.

He got his information from Fletcher in that case, and the money has since been paid into the Court of Chancery.

I used to go home three evenings in the week with Mr. Barber, to read letters that came, to draft answers, make up the diary, prepare business for the following day, and take his instructions upon those matters which I was attending to, which I could not consult him about in the office from the hurry of business.

**JAMES MACNAMARA.** I have been a clerk of Mr. Barber's upwards of four years. I was his clerk in 1840. His office was then in Tokenhouse-yard. I do not remember during that year a case relating to unclaimed dividends in the name of Stewart. (*looking at a paper*) This is my writing. I have a slight recollection of the case, but I do not know when it was.

**MR. ATTORNEY GENERAL.**

Q. Look and see if that is your handwriting?

A. Yes. (*this was the instructions for the affidavit accounting for delay*). I have no recollection upon what occasion I wrote that, or how I came to write it. I suppose I was told to copy it. I cannot say by whom. I was sometimes told to copy things by Mr. Barber, and sometimes by the clerk. by any of the clerks. There was a boy in the office. I believe he might give it me to copy. He had not the conduct of any business. He would be acting under Peckham's authority. I do not think there was anybody besides Mr. Barber, Peckham, and the boy. I had it to copy from somebody. I cannot say by whom. There were other persons in the office. Mr. Knight had his clerks there. He is a solicitor in the same office, and his managing clerk managed some of the business as well, I believe.

**COURT.**

Q. Did he manage for Mr. Barber?

A. No.

**MR. WILKINS.**

Q. Did Mr. Barber buy Mr. Knight's business?

A. I heard something about it, but I cannot swear to the fact. Mr. Knight was there when his clerks were there. Mr. Knight might have given me instructions to write this paper. There was a Mr. Ackerman there. He might have given me instructions. He very frequently did, and so did Mr. Knight. A Mr. Swansland was there. He might have given me instructions. I remember the diary being kept. I frequently made entries in it by Mr. Barber's dictation.

I never saw Mr. Barber in company with Mr. Fletcher except in the office.

(*The bill produced to the witness Hyatt was here read as follows: "Greyhound Inn, Great Marlow, Oct. 13, 1840; wine negus, 1s.; gin, 1s. 6d.; tea, 1s. 3d.; horse to Maidenhead, 5s.; total, 8s. 9d."*)

BARBER. NOT GUILTY.

FLETCHER. GUILTY. Aged 50.

DOREY. GUILTY. Aged 32.

## Appendix 7 OB2, transcript of *Slack* trial

**The Queen v. William Henry Barber, Joshua Fletcher, William Saunders [sic], Lydia Saunders [sic], Georgina Dorey<sup>12</sup>**

8th April 1844

Old Bailey reference number: t18440408,1059

**[Tuesday, April 16<sup>th</sup>]**

1059. WILLIAM HENRY<sup>13</sup> BARBER and JOSHUA FLETCHER were again indicted, with WILLIAM SAUNDERS, LYDIA SAUNDERS, and GEORGIANA DOREY,<sup>14</sup> for[:]

[1<sup>st</sup> COUNT,] feloniously inciting a certain evil-disposed person unknown, to forge a certain will, with intent to defraud Ann Slack.

2nd COUNT, charging Lydia Saunders and William Henry Barber with uttering the said will, knowing it to be forged; and the other prisoners as accessories before the fact.

3rd and 4th COUNTS, stating their intent to be to defraud the Governor and Company of the Bank of England.

5th and 6th COUNTS, with intent to defraud the Rt. Hon. Charles Shaw Lefevre and others, Commissioners for the Reduction of the National Debt.

7th COUNT, charging Barber as the principal in forging, and the other prisoners as accessories before the fact.

Other COUNTS, varying the manner of stating the charge.

MESSRS. ERLE, CLARKSON, BODKIN, and SIR JOHN BAYLEY, conducted the Prosecution.

**JOHN WILLIAM SEATON.** I produce a document purporting to be the will of Ann Slack, deceased, formerly of Smith-street, Chelsea, and late of South-terrace, Pimlico. A copy of an affidavit on the subject was filed at the Prerogative-office. We send the original to the Stamp-office.

**Cross-examined by MR. WILKINS.**

Q. Were you present in the first instance at the Mansion-house, when Mr. Barber was taken?

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<sup>12</sup> The text has been made easier to read by, as in the main text of ‘One Man’s Justice’, using full-stops rather than dashes for the end of sentences and paragraphing text, where helpful. Anything in square-brackets has been added to aid clarity or ease of reading. The £ sign before a number is used in preference to / after it.

<sup>13</sup> This is typed as HENHY in the transcript. The error, and various others, have been corrected in this edition.

<sup>14</sup> Georgiana is, apart from this one instance, named as Georgina in the transcript, which is the name on her birth certificate.

A. Yes. I believe Mr. Barber, on that occasion, expressed a desire to enter upon the case immediately, without the aid of counsel. I was present. I heard Mr. Clarkson caution him, that if he did so, he might do himself a mischief. I do not exactly recollect Mr. Barber saying that he would go on, for he had nothing to fear. He said something to that effect.

**GEORGE BENNETT.** I am a clerk in the Stamp-office. I produce the original affidavit, filed, from the Prerogative-office, at the Stamp-office. It is attached to a copy of the will of Ann Slack.

**WILLIAM SMEE, ESQ.** I am chief accountant of the Bank of England. (Referring to a book.) In the year 1829, there was standing in the books of the Bank, in the name of "Ann Slack, of Smith-street, Chelsea, spinster," £6,629. 17s., in the reduced Three per Cent. Annuities, and £3,500 In the Three per Cent. Consols. They were both purchased on the 23rd of Oct., 1829, and the dividends on them were paid under virtue of a power of attorney, granted to Arderne Hulme, gentleman, of Hampden-wick, Middlesex.

The Reduced power is dated 13th March, 1830, and that for the Consols, on the 5th of Jan., 1830. The dividends on the Consols were received by Arderne Hulme, up to the 6th of Jan., 1832. I knew Mr. Hulme in his life-time. I do not know that he was a partner in the house of Jones, Lloyd, and Co.. I only recollect his person. In consequence of the non-receipt of any dividends from the 5th of July, 1832, the sum of £3,500 consols was transferred to the Commissioners for the Reduction of the National Debt, on the 6th of July, 1842.

**Cross-examined by MR. WILKINS.**

Q. Are you acquainted with the manner in which parties, generally speaking, are identified, who come to receive money from the Bank?

A. I am. The ordinary course is, that a party comes with his attorney, and they send for a broker to identify him. All that is written on the document is "known to me," and the signature of the party.

**Cross-examined by MR. GREAVES.**

Q. Are there not books published by authority, of the unclaimed dividends?

A. There are, published by the Bank.

**MR. ERLE.**

Q. That is, the name and description of the persons?

A. Yes. It does not contain the amount of stock. It contains the period when the first dividend became due.

**MR. GREAVES.**

Q. Does it not also contain the number of dividends unpaid?

A. Yes, up to a certain date.

**JOHN SLACK, Esq.** I reside at Abbots Langley, Hertfordshire. I knew the late Arderne Hulme. My father's name was George Slack. He did not leave considerable property. Mr. Hulme acted as the surviving executor of my father's estate, and guardian to myself and sisters. He died in July, 1832. He continued to act up to the time of his death, not for me, but for my sister. This paper is Mr. Hulme's handwriting (*this announced the purchase of the stock.*)

**Cross-examined by MR. WILKINS.**

Q. Has your sister any income besides that resulting from funded property?

A. She has; she has money out on mortgage. I should say her income was handsome. It is more than £500 a year, independent of the £3,500 consols. I do not know that I am bound to answer whether she is an intelligent lady.

**COURT.**

Q. Probably not very much accustomed to business?

A. Certainly not.

**MR. CLARKSON.**

Q. Can you tell about her age in 1842?

A. Yes, she was of mature age. My eldest child was fourteen years of age last February.

**GEORGE BEAMAN.** I am a surgeon, and live in King-street, Covent-garden. I am the executor of the late Arderne Hulme, Esq.. I produce from among his papers, his books of account with reference to the family of the Slacks. It commences in 1828, and the last entry made by Mr. Hulme is on the 7th of May, 1832. On the 15th of Oct. 1832, there is a settlement of account between Mr. Hulme and Miss Slack, balanced and signed by her. He charges himself with the receipt of the dividends on this £3,500 from Jan. 1830, down to Jan. 1832, on account of Miss Slack, and also of £6,629 Reduced.

**MISS. ANN SLACK.** I reside with my brother-in-law, Capt. Foskett, at Abbots Langley. Mr. Hulme at one time acted as guardian for me, and received my dividends. After his death I received my dividends myself. I was not aware that I had a sum of £3,500 In the Three per cent. Consolidated Annuities. I did not receive any dividend upon that sum until after this inquiry had begun. In 1829 I was living in Smith-street, Chelsea, with Mrs. Leek. She was no relation of mine. I resided there, and paid for my board and Lodging. I left Mrs. Leek's in 1830, and went to reside with Capt. Foskett, with whom I have resided from that time to this. The signature, "Ann Slack," to this will (looking at it) is not my handwriting. I never gave anybody authority to make that will, or to write that name. I have never made any will.

**Cross-examined by MR. WILKINS.**

Q. What is your age?

A. Thirty-seven. I never had an interview with Mr. Barber. I went in a carriage to the office door when Capt. Foskett went in. He left me in the carriage. That only occurred once. This writing to the will does not resemble mine in the slightest degree. This is my name signed to one of these accounts.

**WILLIAM CHRISTMAS.** I am a clerk in the Bank of England. I filled the situation of librarian there. That situation did not immediately enable me to become acquainted with the particulars of unclaimed dividends and stock in the Bank books, but other parts of my duty enabled me to possess that information. I am now suspended.

I know the prisoner Fletcher. I cannot say positively how long I have been acquainted with him. About four years, or it may be near five. I am not sure. I have been in communication with him



on the subject of unclaimed dividends in the Bank books, on four occasions I think. I am only speaking now to the best of my recollection.

I think somewhere about the autumn of 1842, I gave him information with respect to some stock in the name of Slack. I cannot speak for a few weeks. I am not sure of the amount of the stock I told him of, but I think £3,500, or thereabouts, in the Consolidated Three per cents. I told him it was standing in the name of Ann Slack. I did not at that time give him any other description of Ann Slack than the name; but some little time after, upon the second inquiry, I gave him the description of Smith-street, Chelsea, the description that was in the books of the Bank.

Some time after Fletcher showed me a letter. I cannot say at what time, but I think it might be some few months after. Two months possibly, or more. I cannot say exactly. I think it was thereabouts, but I speak from a very imperfect recollection. He said he gave me that letter to satisfy me as to the identity of the party who he had found out to be the owner of the stock, solely for that purpose (looking at a letter). I do not remember the contents of the letter particularly, but I think I remember to have seen this signature. I think this is the letter. I compared this signature with this power of attorney, and the books of the Bank.

After having done so I saw Fletcher again. I do not know how soon. I am not quite sure whether it might not be in the course of a day or two.

To the best of my recollection I told him I thought there was something in the style of the writing, but I thought it a lighter hand; a younger hand, or something to that effect. I forget now the term I used. The letter was the lighter.

I think a very considerable time elapsed before I heard anything at all about it again. I believe the next observation I heard from him about it was, that Miss Ann Slack, of Abbots Langley, was not the person he supposed to be the proprietor, for she had never lived at Chelsea. I understood she had stated so. I do not think anything more passed with respect to it till the probate was brought in and registered.

Q. How did you learn that the probate had been brought in?

A. I saw Mr. Fletcher passing through the Bank at the time it was lying there, and from him I heard it was then lying in the Will-office. He then observed to me he was satisfied that the Ann Slack of Abbots Langley was not the party; he had discovered the proprietor of the stock to be deceased, and the probate was then there.

Hearing from him that there were two of the name, I believe I said to the effect, "You must be very careful in the identity of the party". He said he was quite satisfied that he was right.

I heard nothing from him about the transfer of the stock till after it was done. Some two or three days afterwards he called upon me to make me a remuneration for the information I had given him. He then told me the stock had been transferred, in fact the stock had been transferred and sold. He left £100 in gold with me on that occasion, which I have returned to him since his apprehension. I think it was in the last week in January, or thereabouts.

**Cross-examined by MR. GREAVES.**

Q. Did you return that money before you made any communication to anybody about this transaction?

A. Yes, before I told anybody concerned for this prosecution, or anybody else about what had passed. I have given Mr. Freshfield a detailed account of every-thing I have done while I have been in the Bank, which has been fifty years. I cannot enumerate the persons besides Fletcher to whom I have given information about unclaimed dividends. There were several which Mr. Freshfield has a knowledge of. I supplied to him in writing as well as I could from my recollection every thing I had done. I think I supplied that information two months on Friday last. I have not received thousands of pounds from other persons besides Mr. Fletcher for information I have given, nor yet £500. It may be £500. I will swear it was not thousands.

I have not seen or spoken to Fletcher since he has been in custody. He wrote to me requesting I would send him £100. The person I gave the money to was a stranger to me, but he introduced himself to me by the name of Lawrence.<sup>15</sup> I never saw him before that I know of he brought me a message from Fletcher requesting I would send the £100.

Unfortunately for myself I did not come forward to give information, I have often wished since that I had been honest enough to the Bank to have told them. It was not in consequence of what anybody said of me that they came to me, but it was observed information was in possession of the Governor that I had been doing wrong in that respect, and requesting me honestly to acknowledge all I did, which I did. It was not in order to get free myself that I gave information. It will not place me in a better situation. I have offended so against the rules of the Bank that I am sure it will be unpardonable. I have never been examined before any Magistrate.

**MR. ERLE.**

Q. Look at this paper, is that the account you gave?

A. Yes. This is the truth, which I set down, in a very painful situation of course, and to the best of my recollection, I wrote it out for the satisfaction of the Governor of the Bank. There is only one person in this account besides Fletcher, to whom I gave any information. It mentions the amount which I have received for my information, several hundred pounds.

**MR. GREAVES.**

Q. Will you swear you have not given information to more than one other person besides Fletcher?

A. In that paper there is only one other name. I did not give information to many other persons besides Fletcher. I have done so to several individuals who I have a personal knowledge of, five, six, or seven. It has caused me many a painful, sleepless night to endeavour to recollect, because it has embraced a long period. I may have given information to five, six, or it might be seven, I cannot be sure; but those were individuals I personally knew, and I only reminded them of what some of them possessed a knowledge of already.

**MR. ERLE.**

Q. Were those persons that you gave information to in the regular course of your business, bankers, and people you knew?

A. Not under permission, it was an offence against the rules, even that. I had money for this, but I never asked for any in my life. The other persons to whom I gave information are none of the persons now under charge. I never knew or heard of them before their apprehension.

**MR. GREAVES.**

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<sup>15</sup> Presumably one of the Lawrence family into which Joshua had married. His first wife was a daughter of Lawrence, licensee of The Bull inn, Market Deeping.

Q. Were you asked about what you had done, by the Governor of the Bank?

A. Not naming this in particular. I was asked to acknowledge what I had done offending against the rules of the Bank. In the first instance I certainly did prevaricate to him. I did not deny what I have done, in the hope that it was not known.

**JOHN APSLEY.** In 1842, I was a clerk at the King's Langley station, on the Birmingham Railroad. I recollect two persons coming in the latter part of Sept. 1842, to make enquiry about a family of the name of Slack. The prisoner Fletcher is one of those persons. I do not know who the other was. I have no belief on the subject. They made inquiries of me. Fletcher inquired if there was any lady of the name of Slack, or a family residing in the neighbourhood of the name of Slack. I believe it was a lady. I named the family of the Slacks, of Manor-house. I then said there was a Miss Slack residing with Captain and Mrs. Foskett. Fletcher asked me if I knew the Christian name of the lady. I said Ann Slack, and that Mrs. Foskett was her sister. He asked me if the name of Ann was spelt Ann or Anne. I referred to a book of parcels delivery, and it was Ann. They, (I do not remember which, Fletcher, I believe,) asked me if I knew that she ever resided in Chelsea. I said I did not know. I believe that was all the conversation I had.

Mr. John Slack lives in the neighbourhood. He lives at the Manor-house. I gave them the particulars of Mr. John Slack's family, and Fletcher said he believed it was not the family, he believed it was not the same party. He said to his companion it was not the family they wanted. This took place in the office. Fletcher asked for some refreshment. They did not state any reason to me why they were making these inquiries. I did not ask them.

I told them where Captain Foskett resided, and offered to go with them. They said it was of no consequence, they did not wish to go. They asked me if I knew whether Miss Slack ever resided in Chelsea, with a Mr. or Mrs. Leek. I am sure that was mentioned. I said I did not know. When they left they said they would walk to the

Watford station. In going to Watford they would pass Captain Foskett's house. I told them so.

**Cross-examined by MR. GREAVES.**

Q. Are there not a great many persons come to the station you are at?

A. There are not a great number. I first mentioned to Captain Foskett, some time last Dec., that something was said about Miss Slack having resided with a person of the name of Leek. That was the first time I mentioned anything about the persons having been to the station.

I was required to come to London in Dec. I was at the Mansion-house, but was not examined. I cannot say that I came up on purpose to be examined; I came by Mr. Freshfield's direction. I saw Mr. Freshfield first. I believe I mentioned the name of Leek to Captain Foskett. I believe I mentioned it before it was mentioned to me, but I will not swear.

I first saw Fletcher, since this inquiry begin, at the Mansion-house, in the dock. The examination was going on against him at the time. Barber was also in the dock, nobody else. I had before that informed Mr. Freshfield of what had passed at Abbots Lanley [sic]. I expected to see Fletcher in the dock when I went in.

**JANE SARAH APSLEY.** I am the wife of John Apsley. In the autumn of 1842 I was at the King's Langley station on the Birmingham Railway. I remember my husband bringing two persons into my house, and saying, in their presence, that they came to make inquiry about a family of the name of Slack. I prepared tea for them.

I recognise one of the persons, the one with spectacles (Fletcher). I cannot say as to the other. The one this way (Saunders) I think, is about the sized person. He held his hand up to his face, and concealed it, therefore I am not able to form any belief or opinion about him. I do not recollect that he said anything particular about the Slacks. Fletcher did; he inquired whether Mrs. Foskett's Christian name was Margaret or Mary before her marriage. I told him I did not know.

I proposed to take in candles. Fletcher said they did not require them. I sent in candles contrary to their wish. They were sitting round the table. When the candles came in they got up, put on their great coats to take leave, and went away. I went in after the candles were taken in. They were then putting on their great coats.

**Cross-examined by MR. GREAVES.**

Q. You sent in candles by a servant?

A. Yes, and they got up to put on their coats to go away. It was between six and seven o'clock in the afternoon, and at the latter end of Sept. The first time any inquiry was made as to what I knew about this was some time before Christmas. I came up with my husband to London. I went to the Mansion-house. Mr. Baxter, Captain Foskett's attorney, caused me to come up. I was not examined at the Mansion-house. I saw two persons in the dock there. I was a very short time in the presence of the two persons who were at our house. I was in and out of the room. It was longer than a minute or two.

**MR. ERLE.**

Q. Had you an opportunity of seeing the countenance and knowing the features of Fletcher?

A. I had. He talked more than the other person. He had not spectacles at that time. I am certain he is the man.

**CAPTAIN JOSEPH FOSKETT.** I am an officer on half-pay, residing at Abbots Langley. I married the sister of Miss Ann Slack. Miss Slack lives with me. In Oct., 1842, I received a letter, signed, "Barber and Bircham."

**WILLIAM JOHN DONALD.** I am acquainted with the handwriting of the prisoner Barber. I believe the signature "Barber and Bircham" to this letter to be in his handwriting.

**CAPTAIN FOSKETT.** I wrote an answer to that letter. This is a copy of it. It is impossible to say the words. I believe it to be an exact copy. About the 26th of Oct. I received this other letter, to which I sent this answer (*produced by Mr. Wilkins*) on the 29th of Oct. I received this letter.

**MR. DONALD** re-examined. I believe the signature to this letter of the 26th of Oct. To be Mr. Barber's, also this of the 29th, only the signature. The body is not his.

(Letters read).

**"To Captain Foskett, Abbots Langley, Herts.**

28, New Bridge-street, Blackfriars, London,  
4th Oct., 1842.

Sir,

We have occasion to ascertain who is the legal personal representative of Ann Slack, formerly of Chelsea, spinster. As we are informed you intermarried with some member of that lady's family, we should feel obliged if you can inform us who are her executors, administrators, or other legal representatives.

We are, Sir, your very obedient servants,  
BARBER and BIRCHAM. "

**"From Captain Foskett, to Barber and Bircham. 75, King's-road, Brighton, Oct. 13, 1842.**

Gentlemen,

In reply to your letter of the 4th inst., addressed to me at Abbots Langley, I beg to inform you Miss Ann Slack is my wife's sister, and resident with us; her elder brother is also here. Any further communications will reach her, addressed as above, for the present and next week.

(Signed) JOSEPH FOSKETT. "

**"From Barber and Bircham, to Captain Foskett. 28, New Bridge-street, Blackfriars, London, 25th Oct., 1842.**

Sir,

We are obliged by your letter of the 13th instant; but as we find an entry of the death of Anne Slack (formerly of Chelsea) at Somerset House, by which it appears she died at Bath, we feel some doubt as to the identity of the lady in question. If, therefore, it would not be giving you too much trouble, we should feel exceedingly obliged by your acquainting us whether Mrs. Foskett's sister formerly resided at Chelsea, and whether she spelt her Christian name with or without an e. We noticed in your letter you spelt her name Ann.

(Signed) BARBER and BIRCHAM".

**"From Captain Foskett to Barber and Bircham. King's-road, Brighton, Oct. 27, 1842.**

Gentlemen,

Having extended our stay at Brighton, your letter of the 25th inst. Has been forwarded to me. In reply to which. I beg to inform you Miss Anne Slack does spell her Christian name with an e, and resided in Smith-street, Chelsea, with a family of the name of Leek about twelve years since, and has constantly resided since that period with her sister and myself. As you have not communicated the object of your inquiry, it is not in my power to assist you further at present We shall feel obliged by information on that head; and should it relate to bequests of the late Mrs. Bevan, deceased, shall be glad to hear, or upon any other matter.

(Signed) J. FOSKETT.. P.S. We shall leave Brighton on Wednesday next for Abbots Langley, Herts."

**"From Barber and Bircham to Captain Foskett. 28, New Bridge-street, Blackfriars, London, 29th Oct., 1842.**

Sir,

We are much obliged by your letter of the 27th inst., and beg to know if it is probable that you will be in town shortly, as we should be extremely glad if you could favour us with a call, when the object of our inquiries shall be explained.

(Signed) BARBER and BIRCHAM. "

**CAPT. FOSKETT.** In consequence of that letter I called at the office of Messrs. Barber and Bircham. It must have been the first week of Nov.<sup>16</sup> I think at the latter end of it. I went in company with Mrs. Foskett and her sister and Mrs. Leek. I left them in the carriage in the street, and went in and had an interview with Mr. Barber.

He first asked me what property Miss Slack possessed, whether she had landed property, whether she had funded property, and to a large amount, whether she managed her affairs herself, what was her age, and I think he then communicated to me what had taken place, the object of his inquiry, that is to say, that a lady had died and left a considerable sum of money, to which he thought Miss Slack entitled.

He asked me if she had ever signed a power of attorney, and if I believed she had received all that was due to her. He asked many other questions. I think I then told him that I could not recommend Miss Slack to incur any expense, until he could show me there was some reason to think she was entitled to something. He said that some trouble and expense had been incurred, but at present that was his own, that there probably might be more expense, and perhaps some risk. He asked me if she had any wealthy relations likely to leave a considerable sum.

**COURT.**

Q. Did you give any answer to the inquiry about her managing her affairs, her age, and whether she had landed or funded property?

A. I said that she had still a trustee living, who managed part of her affairs, but that the rest was in her own hands, and I think it was then he asked if I believed she had received the whole that was due to her. I said yes, I believed so.

I thought him reserved, and I offered to identify ourselves as parties to whom he might give any information he thought proper, to show who we were, and I named certain parties, Messrs. Sutton, Messrs. Baxter, of Lincoln's-inn-fields, and Messrs. Clark and Cooper, of this Sessions-house. He said, he knew Mr. Clark very well, but it was of no importance then.

I told him I could introduce Miss Slack to him in a very short time if it was necessary. She was outside in the cab at that time. I did not tell him so. He expressed no desire to see her.

**MR. ERLE.**

Q. Do You remember anything more at that interview?

A. By that time Mrs. Foskett, who had been waiting a long time in the street, in consequence of my having been detained a long time below before I saw Mr. Barber, came to the door and inquired how much longer I should be detained, I desired her to come in and hear what the gentleman had to say, upon which Mr. Barber asked a question which I do not exactly remember, but to which Mrs. Foskett replied - "You know, my dear, Mr. Hulme always managed her affairs till his death;"

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<sup>16</sup> It was the 21 November 1842.

I then rose to leave the room, Mr. Barber followed us to the top of the stairs, and asked, "Is Miss Slack a person of strong nerves, or likely to be much concerned, or affected, or excited, (I cannot recollect the exact terms) by the communication that a very considerable sum I may say £10,000, or even more, has been left to her;" he concluded by saying that he had every reason to think that he should put her in early possession, but there was a point of doubt. I told him I did not think Miss Slack would be very much concerned, as she was sufficiently indifferent about these matters. I do not mean to say those were the precise words, but to that effect. We then left.

I think Mr. Barber said that the lady who had left the property had died at Bath, but he had previously written to me to that effect, and I cannot say exactly. That she had died about six weeks since. The time at which she had died was part of the conversation. I asked when she had died, and he said about six weeks since, she had died or was buried.

He requested I would not pursue the inquiry through any other channels. I think that was at the conclusion of the conversation. I am not quite sure at what time it was. I remember the fact perfectly well, but cannot remember at what period it was.

On the 28th of Nov. I received this letter.

**MR. DONALD** re-examined. I believe the signature to that to be in the hand writing of Mr. Barber.

**[Barber & Bircham to Captain Foscett]**

(Read).

"28, New Bridge-street, Blackfriars.

28th Nov. 1842.

Re Ann Slack, deceased.

Sir,

It would probably facilitate our inquiries if you could oblige us with the names of the trustees holding funded property for the benefit of Miss Ann Slack.

Requesting the favour of your early attention, we remain, &c. BARBER and BIRCHAM."

**CAPTAIN FOSKETT.**

I sent no answer to that letter. I then received this, to which I sent this answer.

**MR. DONALD.** The signature to this is also Mr. Barber's.

**[Barber & Bircham to Captain Foscett]**

(Read).

"28, New Bridge-street, Blackfriars, London. 12th Dec, 1842.

Re Slack.

Dear Sir,

In reference to our last letter some explanation of the object of the inquiry which it contained may be necessary. It appears that the lady entitled to the property in question was possessed of a small portion of stock in the public funds, and it would materially assist us in ascertaining the identity if you would acquaint us with the names of her trustees. If you could at the same time favour us with her signature, we think it would enable us at once to determine whether it is really her property or that of another party. If you are likely to be in town in a few days, we should feel obliged by the favour of a call. We are desirous, for the sake of all parties, of clearing up the point with the least possible delay. We remain, &c. (Signed) BARBER and BIRCHAM. "

**Captain Foskett to Barber and Bircham.**

Abbots Langley. 13th Dec. 1842.

Gentlemen,

I have deferred replying to your last inquiry, with the intention of calling shortly, and purpose being in town on Friday next, or Saturday, when I will do so about eleven or twelve o'clock. You will no doubt remember that I stated I could not recommend Miss Slack to make herself a party to inquiry that would incur any expense, until she should see some little ground for supposing it probable she may prove to be the person legally entitled to the property bequeathed, when she would be willing to enter into some arrangement. As you have not yet favoured her with any further explanation, we regret the reserve you think necessary as an obstacle to our throwing further light upon the subject, which a very little communication might enable us to do.  
(Signed) J. FOSKETT. "

**CAPTAIN FOSKETT.** After that letter, I called on Mr. Baxter, my attorney, and in company with him I called on Mr. Barber, at his office. It was soon after receiving that letter. I do not remember exactly how soon. Mr. Barber asked if he was a professional man. He said yes.

He then proceeded to state in substance what he had stated to me before, and he said it would facilitate his object if we could give him the signature of Miss Slack. I asked him by whom he was employed, or the name of his informant. He said that he had enjoined him to give no particulars and no names, but as he (Mr. Barber) was resident in town, and a professional man, he left him to make the inquiries, or to pursue the business. I do not recollect the expression exactly. I am not quite sure whether the remark was not made at the first interview. I do not distinctly recollect.

He said he had access to information at the Bank not generally attainable. That remark was at the second interview, when Mr. Baxter was by.

I asked Mr. Barber if he would give me the name of any broker, in order that I might see that he really had some knowledge with respect to Miss Slack, whether he really knew anything about Miss Slack's affairs. That was my object. He did not mention any one. I do not, at this moment, remember whether he made any further inquiry about Miss Slack.



At the conclusion of the interview, I left with Mr. Baxter. I heard nothing more of or from Mr. Barber personally till this question arose, in the Nov. of 1843. I did from Mr. Baxter, but had no communication, either by letter or verbally, from Mr. Barber about this matter afterwards.

**Cross-examined by MR. WILKINS.**

Q. When did Mr. Baxter give you any information?

A. It arose thus, I think. Mr. Baxter and myself discussed the propriety of sending Miss Slack's signature to Mr. Barber; I returned home, and told Miss Slack that Mr. Baxter did not think any harm would occur, but I thought it better she should not write to Mr. Barber, but address Mr. Baxter, which she did, and which was conveyed to Mr. Baxter. I did not hear some time after that the real owner had been discovered. I never heard that the real claimant had been discovered.

Mr. Baxter informed me, that he had received a communication from Mr. Barber, stating that he was satisfied Miss Slack was not the party entitled to it. At our interview, he expressed the opinion that Miss Slack was the party entitled to it.

I told Mr. Barber that I did not know exactly Miss Slack's age; I might have said she was about twenty-seven, I do not know. He said forty would do, therefore I took no great trouble to remember. I at the same time said I did not exactly know her age.

**MR. ROBERT BAXTER.** I am a solicitor, and live in Lincoln's-inn-fields. On the 17th of Dec, 1842, I accompanied Captain Foscett to the office of Barber and Bircham, in Bridge-street, Blackfriars, and had an interview with Mr. Barber.

Mr. Barber said he could give some information relative to some property. He stated, that he was enquiring relative to the representatives of Ann Slack. Captain Foscett gave him some information relative to Miss Slack. He said the description Captain Foscett gave coincided very much with the party for whom they were enquiring; but there was a discrepancy which could be cleared, if he could have Miss Slack's handwriting to compare with some document. I believe he mentioned documents. He did not mention what they were. I do not recollect anything particular that passed beyond that.

Captain Foscett afterwards consulted me on the propriety of giving the handwriting, and a note was written by Miss Slack, purporting to be addressed to myself. This is the note, it was forwarded to me by Captain Foscett, to be given to Mr. Barber. I took it to Mr. Barber on the 22nd of Dec. I saw him. I merely left it with him. Nothing passed. I received this letter two days after from Mr. Barber, enclosing Miss Slack's note.

**MR. DONALD** re-examined. This is Mr. Barber's handwriting.

**[Anne Slack to Mr. Baxter]**

(Read).

"Rose Hill, Dec 21st.

My dear Mr. Baxter,

As Captain Foscett informs me you have had an interview with Messrs. Barber and Bircham, and think there is no objection to their seeing my signature for the purpose of

assisting their inquiries respecting the property to which they think I may be entitled, I have sent it to you, that you may submit it to their inspection as you think right.  
(Signed) ANNE SLACK."

**[William to Miss Slack<sup>17</sup>]**

"28, Bridge-street, Blackfriars, 4th Jan. 1843.

Dear Sirs,

We beg to return Miss Slack's letter, and to state that we find the signatures do not correspond; and, consequently, we have arrived at the conclusion, that the identity cannot be supported. We trust you will be good enough to consider this negotiation confidential, and should our exertions to discover the right party prove successful, we shall not fail to communicate to you the result, for the satisfaction of the young lady and her friends.  
(Signed) BARBER and BIRCHAM. "

**MR. BAXTER** re-examined.

Q. Did you hear from Barber and Bircham, or either of them, from that time till the discovery of this?

A. I am not quite certain. I once met Mr. Barber in the street, and I mentioned the circumstance to him, but whether it was before or after I received this letter, I cannot say. Nothing of any importance passed. No communication was made to me of the discovery of the right owner. Mr. Barber was quite a stranger to me when I first went to him. Captain Foskett gave him my name. I do not know whether he gave him my address. I think he gave him my name as his attorney. I think Mr. Barber said, "Are you in the profession?"

**Cross-examined by MR. WILKINS.**

Q. You remember meeting Mr. Barber once, was that in Lincoln's-inn-fields?

A. I think it was at the corner of the gate going into Lincoln's-inn. I spoke to him on the business. I have forgotten the conversation. I rather think it was asking if he had had an opportunity of comparing Miss Slack's letter with the writing.

**MR. ERLE.**

Q. Can you say whether he told you he had found out the party entitled to this property?

A. He did not.

**GEORGE OFFLEY.** I am a solicitor, residing in Henrietta-street, Covent-garden. In 1843 I was acquainted with Miss Ann Slack, who formerly resided in Smith-street, Chelsea. I was not intimately acquainted with her, I knew she lived there.

In March, 1843, I saw an advertisement relating to a Miss Ann Slack, in consequence of which I wrote a letter to Barber and Bircham, to whom the advertisement said communication was to be made. This is the letter I wrote.

**[Mr. Offley to Barber & Bircham]**

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<sup>17</sup> The identification of William's handwriting by Mr Donald immediately above the reading of the two letters must mean this one, of 4 January 1843.

(read)

"March 8, 1843. Gentlemen,

I saw an advertisement in the Times of this morning inserted by your firm, for the discovery of the representatives of Miss Anne Slack, formerly of Chelsea, spinster; I know a lady of that name residing with her brother-in-law, Captain Foscott, at Rose-cottage, Abbotts Langley, Herts, who resided some years in Chelsea, and who had an uncle named John Slack, who lived in Sloane-street, Chelsea.

**GEORGE OFFLEY.** I afterwards received this answer.

**MR. DONALD** re-examined. I am not certain whether this signature is Mr. Barber's writing. I will not swear it is his.

**MR. WILKINS.**

Q. Do you know Mr. Bircham's writing?

A. I believe I do. I certainly do not believe it to be his writing. I am not so well acquainted with the signature of Mr. Bircham as I am with that of Mr. Barber, therefore I cannot give an opinion.

**MR. OFFLEY** re-examined. I know nothing at all of Mr. Barber or Mr. Bircham. I did not go to their office about this matter, or see either of them about it.

**THOMAS BAYNER CHAPPELL.** I am superintendent registrar of births, deaths, and marriages of the parish of St. George, Hanover-square. The Belgrave district is within that parish. I produce the original register of deaths of the Belgrave district, in which I find an entry of the death of a person named Ann Slack, of No. 8, South-terrace, on the 17th of Feb., 1843.

Mr. Jordan is the registrar of the Belgrave district. I received the original register from Mr. Jordan within three days after the 30th of Sept. It was not full till the 17th of August, but it is returned to me when they come to make up their quarter's returns, ending on the 30th of Sept. It has never been out of my hands since it was handed to me.

**WILLIAM PREW JORDAN.** I am the registrar of births, deaths, and marriages for the Belgrave district.

On the evening of the 25th of Feb., last year, the prisoner Fletcher called on me, and said he came to register a death. I asked him when it occurred. He said on the 17th of Feb. I asked where. He said No. 8, South-terrace. I said I did not know such a place as South-terrace in the district, there was a South-place, and asked whether he meant that, or whether he meant some houses further on, which went by the name of terrace, but there was no name written up. They were called Ranelagh-terrace and Kemp's-terrace, a part of them. I asked whether he meant those houses near the wooden bridge. He said yes. I asked the number. He said No. 8. I said I did not think there were so many as eight. He said there was, and I entered it as such, as I find it here.

He gave me the name of Ann Slack, and I wrote it down in his presence. I asked him how the name Ann was spelt, with or without an e. He said with an e. I then entered the word "female" under the sex, and the age sixty-eight years. I got that from Fletcher, from what he told me. I inquired if she was a married woman or not. He said no. I asked her occupation. He said she was a gentlewoman and a spinster.

I then asked the cause of death, which he stated to be gout. I asked whether it was gout of the stomach, heart, or head, because, I said, "People don't usually die of gout, except it attacks some internal organ". He said she had been a long sufferer with the complaint. I then entered it as gout simply.

I then asked him if he were present at the death, and he answered yes. I have so written it.

I then asked him his address and he gave me "No. 4, James-street". I asked him "Where, what James-street?" He said, "Commercial-road". I said there was no James-street, Commercial-road, Pimlico; there was a Robert-street. I asked him which Commercial-road he meant, whether he meant Commercial-road, Lambeth, or Commercial-road East, because there are two other Commercial-roads in London. He said Commercial-road East.

He then signed his name, "Robert Hart," and I affixed the day of the month to the entry, "25<sup>th</sup> Feb., 1843," and signed it myself. I then gave him a certificate, which he was to hand to the undertaker, to be given to the clergyman. I do not recollect whether he asked for it; I gave it as a matter of course. On the 14th of March a woman came to me dressed in deep mourning, and, in consequence of what she said to me, I gave her a copy of the register. This is it. I cannot recollect the woman who came positively, I did not take much notice of her. I cannot say either one way or the other, whether it was either of the female prisoners.

**Cross-examined by MR. GREAVES.**

Q. Do you mean to say you can speak positively to Fletcher?

A. I swear positively to him, to the best of my belief and knowledge; as far as the recollection of a man coming to my house once, I should say he is the man. I have never entertained any doubts about him at all, and the more I see him the more I am confirmed in that belief. He was dressed in a small brown top coat; not a great coat, but a great surtout. He had not spectacles on at that time. The man who came to me was not a taller and stouter man. I have never said so, nor that the man had light hair.

I do not know a Mr. Henry Fletcher, I never heard of him. I certainly never told any one that the person who entered the registry had light hair, it was dark brown, almost approaching to black.

I first saw Fletcher, after this charge, at Giltspur-street Compter; he was in a cell alone when I first saw him. I was taken there with a view to see if I could identify the person who came to my house. I went round to a great many cells with the Governor, and at last came to a cell where Fletcher was alone.

It was in the evening when he came to my place, between seven and eight o'clock, I should say, as near as I can guess. I had candles. He might be there a quarter of an hour, I cannot say to a minute.

**MR. CLARKSON.**

Q. You went to several cells in which you saw prisoners alone?

A. There were several in some cells, and when I saw Fletcher I was sure he was the person. He was alone. He had not spectacles on at that time. I did not notice his hair particularly at that time. It was partly grizzled, not quite so grey as it is now.

**JOHN ROYCE TOMKINS.** I am a clerk to Messrs. Freshfield, solicitors to the Bank. About six weeks or two months ago I made a search in the index of the general register of deaths at Somerset-house from the 1st of July, 1837, to the 31st of Dec, 1842. I did not find any entry there of the death of a person named Ann Slack, of Smith-street, Chelsea, or of Bath. I am sure there is no such entry.

I have also looked in the neighbourhood of the wooden bridge, Pimlico, for a terrace called South-terrace. The wooden bridge is at the end of the Belgrave-road. I believe it crosses the Grosvenor-canal. It is this side of King's-road, to the left I should say, but it is before you come to King's-road. I could not find any South-terrace. I found a South-place and a No. 8. I could not find any trace of a person of the name of Ann Slack there. I found a Commercial-road in that neighbourhood. I could not find any James-street there. I also inquired in the neighbourhood of Commercial-road East. I did not find any James-street, Commercial-road East, properly so described, although there are several James-streets in the vicinity. I made inquiries at No. 4 in every one of those streets. I could gain no tidings whatever at either of those houses, of a person of the name of Robert Hart.

**Cross-examined by MR. GREAVES.**

Q. What book was it you searched at Somerset-house?

A. The Index. I was told so by the officials in the office. I have been there before to search. There were persons in the office whom I paid for the search. I did not know any of them personally. I know nothing of the book except what they told me. I do not recollect that I saw its title.

**MR. BODKIN.**

Q. What office was it at?

A. The General Registry-office, Somerset-house. That was written up over the door. I have searched at the same office upon other occasions. I do not know that it was the same book.

**HENRY PAGE.** From Sept., 1842, to Oct. 1843, I occupied the house No. 8, South-place, Pimlico, near the wooden-bridge. During the whole of that time no person named Slack resided in that house.

**MARTHA ANN NEVILLE.** I am the daughter of Mr. Neville, a tailor, and live at No. 7, Francis-street, Tottenham-court-road. About the 9th of March last year I remember Mrs. Dorey coming to my father's house to take a lodging for a lady who she said was coming out of the country about law business (I think it was about Thursday, the 9th of March, and between twelve and one o'clock). She said she could not give a reference, but offered to pay a week in advance instead. She said she would come again in about two hours. I waited till the end of the two hours, and then went out. When I returned in the evening I found another person had come into the lodging, and next morning I saw Mrs. Saunders at the lodging. She called herself Miss Slack.

She remained in the lodging three weeks and a day, or a month and a day. She left on Friday, the 7th of April. Mrs. Dorey came for her, and they went away together in a cab. At the time Mrs. Saunders was occupying the lodging, Mrs. Dorey addressed her as Miss Slack. She came to see her about two or three times a week, in the evening.

Mrs. Saunders wore light flaxen ringlets. I attended to her bed-room, and while she was there I noticed there was dark hair in the comb. I did not notice the brush. Mrs. Saunders always wore a bonnet in-doors.

Mrs. Dorey asked for Miss Slack when she came to see her. I did not at that time know Mrs. Dorey's name. Mrs. Saunders said if any body came but her lawyer I was to say she did not live there. There was a dark gentleman called who she said was her lawyer. She told me so. He called about once a week, and sometimes he has been twice. I do not know him.

**Cross-examined by MR. STONE.**

Q. You are quite sure it was on the 9th of March in the last year that she called?

A. Yes, I first saw Mrs. Saunders after the 7th of April at the Mansion-house in March this year. I had not seen her for twelve months. She was then in custody. I knew she was in custody before I saw her. I saw no other lady in custody at that time. I had before that seen Mrs. Dorey in Oxford-street.

I did not then know that Mrs. Dorey was the sister of Mrs. Saunders. I did not know it till lately. I knew it when I went to the Mansion-house. I went to Mrs. Dorey's house with Forrester. I never saw Mrs. Saunders without a bonnet. She had light ringlets. They were false. I know that because there was dark hair in the comb, and they looked like false ringlets. They hung like false ringlets. I first made that statement to Mr. Forrester. That was before I had seen Mrs. Dorey. I am sure of that. It was about Nov. I am sure I told Forrester that she had light flaxen ringlets, or false hair. I explained to him at the time that she had dark hair in the comb. I stated that to him before I went to see Mrs. Dorey. I do not know that Forrester searched for any light flaxen ringlets at Mrs. Dorey's. I did not hear him ask Mrs. Dorey for some white ringlets.

I first discovered the black hair in the comb when I went up stairs into her bed-room. I cannot name the day. It was when she lived at our house. She had a hair brush. I did not wash it for her. I waited on her. It was on the dressing table. I did not notice any black hair about it. She only had one brush. Mrs. Dorey has dark hair. I never saw her in Mrs. Saunders's bed-room. She never went there to my knowledge. Her bed-room was above the sitting-room. She was not a good deal there. She called two or three times a week. She never spent an evening with her. She stopped a very little time. I was mostly at home during the whole month. I was very seldom out. I was sometimes. I did not sometimes spend the evening out. I did the first night, but I was home at ten o'clock then. It was not my proposal that Mrs. Dorey should pay a week in advance. She told my mother who let the lodging. I did not hear her. She told me she could not give a reference. I have not travelled a good deal with Forrester. I have been out with him in search for the person. I had never seen this person before, whoever she was. I have always told the same story. I was examined before the Lord Mayor.

**Cross-examined by MR. WILKINS.**

Q. Did she tell you what her lawyer's name was?

A. No. She never said that his name was Jones. I sometimes opened the door to admit the person she said was her lawyer, and sometimes my mother did. I have since seen a person a great deal like him, but I could not swear to his face. That is the one (Fletcher).

I never saw Mrs. Saunders write.

**MR. CLARKSON.**

Q. When you saw Mrs. Saunders at the Mansion-house where was she?

A. In the room before she went into the justice-room. She walked past me. There were other persons there. I had no doubt of her when I saw her. I gave an account of the light ringlets before Mrs. Saunders was taken into Custody. She was standing by herself at the Mansion-house. I pointed her out to Mr. Forrester before any question was asked about her. I did so as she walked past, to Mr. Weir. I am quite sure that she is the same person.

**MR. STONE.**

Q. When she walked through was she in custody?

A. She was. She had not flaxen ringlets on then.

**MR. CLARKSON.**

Q. Was the woman in the habit of coming and sitting with you in the kitchen during the month she was staying there?

A. Sometimes. I was in the habit of seeing her every day during the three weeks or month. I waited upon her at her meals as well as in her bed-room.

**COURT.**

Q. Did not the flaxen ringlets make a strange alteration in her appearance?

A. She looked rather different, but I took notice of her features. I am twenty-nine years old. I remember her face. She had rather high cheek bones, and her nose was rather broad at the bottom.

**MARTHA NEVILLE.** I am the mother of the last witness. I remember a person coming to take lodgings at my house. I believe on the 9th of March, but I will not be sure. It was the 8th or 9<sup>th</sup>. I am not sure which. I saw the person that came to take the lodging. I had some conversation with her on the day the lodgings were taken, but very little. I afterwards saw that same person calling at the lodging occasionally, generally about every evening. I have sometimes opened the door to let her in, but it was generally dusk.

I recognise Mrs. Dorey as the person. I went with Forrester to a house in Oxford-street, lately, and there saw Mrs. Dorey. Between seven and eight o'clock in the evening on which Mrs. Dorey took the lodging, the person for whom she took them came in a cab with Mrs. Dorey.

I asked Mrs. Dorey when she came first, for a reference, and she could not give one, but paid me one week in advance. She staid a very little while after bringing the other lady. That other woman continued to occupy the lodging three weeks and a day, or a month and a day. I do not know which. Mrs. Saunders is that person. I am positive of it.

I knew her by the name of Miss Slack. Mrs. Dorey gave her that name. I called her Miss Slack, and no other name. Mrs. Dorey came to see her almost every evening. A gentleman came to see her, who she said was her lawyer. I cannot be certain how often he has called. About two or three times a-week. I cannot exactly say.

**Cross-examined by MR. STONE.**

Q. How long have, you let lodgings?

A. I have been in the habit of letting lodgings above forty years. There is nothing unusual in paying a week's lodging in advance. It is often done.

I never saw this lady without a bonnet while she was lodging with me. I never saw her before she came to occupy my lodging. She left in the beginning of April. I never saw her after she left my place until I saw her at the Mansion-house. My daughter was then with me. I did not learn from her that she had seen her before I saw her. I do not know in what part of the Mansion-house she was. She was in custody of an officer. She was brought up by the officer, and came through the room where the Lord Mayor was.

I have not heard my daughter's description of her here. I have not been in Court. I expected to see the woman when I went to the Mansion-house. I waited for that purpose. My daughter and I were both together.

I cannot see very well without spectacles. I constantly wear spectacles at home. I do not know how long ago it is that I went to see Mrs. Dorey. I went with my daughter and Mr. Weir to recognise Mrs. Dorey in Oxford-street. Forrester was not with us. When Mrs. Dorey came to see Mrs. Saunders, she used to go into her room. She did not stop a great while. She was there most evenings.

**MR. BODKIN.**

Q. Had you your spectacles on when you were at the Mansion-house?

A. Yes. I was not in the room with the Lord Mayor, but in a room through which people go, in order to get into his room. Several persons had passed through before Mrs. Saunders. I did not notice any thing happening to my daughter when Mrs. Saunders came into the room. She cried a little. I do not know what for. It was when she saw Mrs. Saunders. My attention had not been drawn to several other females at the Mansion-house before I saw her.

**Cross-examined by MR. WILKINS.**

Q. Did you ever see the lady, that was lodging at your house, write?

A. No.

**COURT.**

Q. Did she not wear hair of a totally different colour, to what she has on now?

A. Yes. That did not alter my opinion of her; still the same person. I heard my daughter say something about her nose here, I believe. I was not in court two minutes. I have not the least doubt about Mrs. Saunders being the woman that was brought to me, under the name of Slack.

**JOHN WILLS.** I am a proctor in Doctors' Commons. I am acquainted with Mr. Barber. On the 16th of March, he called on me, in company with a female. She was a stranger to me. This entry, in my diary is my hand-writing.

The female went by the name of Emma Slack. I cannot recollect whether that name was given by her or Mr. Barber. It was said in his hearing. The date at the top of this will is in my handwriting. I have very little recollection of the subject, but from what little I can recollect, the second female (L. Saunders) resembles her.



One or the other gave me instructions to obtain probate of this will. I cannot say which. This will was produced to me to obtain probate. Emma Slack is the name mentioned in the will as executrix. I do not know whether the female used the word executrix, she signed the affidavit, and oath was administered to her as executrix. I am not certain whether she or Mr. Barber spoke.

I obtained probate of the will. The effects were sworn under £5,000. I received a check at the time, from Mr. Barber, for £80, the stamp-duty. On the 22nd of March, I sent the probate to the office of Barber and Co.

**Cross-examined by MR. STONE.**

Q. How long was Mr. Barber and the lady in your presence?

A. About five minutes. I saw the lady next at the Mansion-house about a month ago. A great number of persons come to my office for the same purpose. I cannot charge my memory whether the lady spoke at all. I am sure Mr. Barber spoke. It is an ordinary thing for an executor or executrix to take no part in the transaction.

**Cross-examined by MR. WILKINS.**

Q. Was not Mr. Barber's conduct, as far as you witnessed it, perfectly consistent with that of an honourable attorney?

A. Perfectly so. I implicitly believed the lady to be Miss Slack. I might have questioned her or Mr. Barber (I cannot say which) as to the time of death of the deceased, and such questions as that. That would be necessary to fill up the ordinary forms. I have known Mr. Barber I think, since some time in 1842. I have not done business for Barber and Bircham since this transaction. This was the last transaction. I had done business for them before. I sent the probate, directed to Barber and Bircham, to their office. I always regarded Mr. Barber as an upright and honourable man.

**MR. ERLE.**

Q. You say when she was introduced, you implicitly believed her to be Miss Slack; did you trust entirely to Mr. Barber for that?

A. Yes, I trusted entirely to Mr. Barber. I do not remember such a thing occurring to me, as an entire stranger coming to my office, and employing me to take out probate. They have always been introduced to me by some person I rely upon, who either brings or sends them. I have some reference. A party I know attends with the executor or executrix. I take them on their representation. A person might bring an executor to my office on the recommendation of a friend. I should take that friend's word.

Q. You have said Mr. Barber's conduct was consistent with that of an honourable and honest attorney; was there anything in this matter more than the mere employment of you to take out probate?

A. No, nothing more. It was one of the most ordinary transactions that could take place.

**JOHN WELDON.** I am clerk in the Will-office in the Bank. I produce the Will-taking-in book. On the 27th of March, 1843, probate of the will of Ann Slack was left at the Bank. I cannot say by whom it was Left. This letter addressed to the Governor of the Bank was left at the Bank, most likely the day following. I cannot say precisely the day, whether it was that day or the day following. It was left at the Will-office at the Bank. The probate was registered at the Bank on the 31st of

March. This letter is an application for the re-transfer of the stock. The probate appears to have been returned on the same day, the 31st, to N. [sic] B. Bircham.

**Cross-examined by MR. WILKINS.**

Q. Is the signature of Mr. Bircham attached to that?

A. Yes, to the re-delivery of the probate. I cannot tell who it was that lodged the probate on the 27th.

**MR. CLARKSON.** Q. Does that letter bear any memorandum of yours?

A. Yes. It bears a copy of the register in the registry book.

**MR. DONALD** re-examined. I cannot identify whose writing the words "Francis-street, Tottenham Court-road," are. This "17th February," in figures, in the body of the letter, is Mr. Barber's handwriting. The other is in the handwriting of another party.

**Cross-examined by MR. WILKINS.**

Q. Have you not precisely the same means of knowing Mr. Bircham's handwriting as Mr. Barber's?

A. I have not paid so many of Mr. Bircham's checks as I have of Mr. Barber's. I have paid several of Mr. Bircham's; but it was seldom two or three checks of his were written alike, therefore I cannot identify his writing. I cannot identify this to be his. I cannot tell how many of his checks I have paid, certainly not scores. There may be a score. Barber and Bircham may have banked at the Bank of England two years. Their checks have, generally speaking, been joint checks. I decline to identify this writing. I cannot identify it. I cannot say whether I believe it to be Mr. Bircham's writing. I cannot say that I have ever seen Mr. Barber write in my life.

**MR. ERLE.**

Q. Does Mr. Barber write alike generally?

A. Yes, and Mr. Bircham does not.

**MR. WILKINS.** Q. Have not the checks that have been paid, been the joint checks of Barber and Bircham on almost every occasion?

A. Certainly not. I have paid Mr. Barber's checks separately, and have been in the habit of seeing his checks much more frequently than Mr. Bircham's. I have been a clerk in the Bank fifteen years, and am thirty-three years of age. I have never sworn to handwriting from having seen it less frequently than Mr. Bircham's. I have no belief about this handwriting. I have paid sums of money on the sight of Mr. Bircham's writing. I cannot recollect paying any checks written by Mr. Bircham in my life. I have paid on his signature jointly with Mr. Barber's. That is not all I have done with Mr. Barber's. I have paid them from the body. I can prove Mr. Bircham's signature, but not his writing. I can give an opinion on his signature, but not his writing, because, to my knowledge, I have never paid checks written by him.

**[Letter from Emma Slack to Governor of the Bank of England]**

(This document was as follows:- (sic – no closing parenthesis)

"To the Governor of the Bank of England.

Sir,

There was lately standing in the name of Anne Slack, of Chelsea, spinster, the sum of £3,500, in the Three per Cent Consolidated Bank Annuities. From the period which has elapsed since any dividends have been received, it is possible that the amount may have been carried to the Commissioners for the Reduction of the National Debt. My aunt died on the 17th day of February last, leaving me her sole legatee and executrix. I have since proved the will, the probate whereof has been duly lodged in the Will-office of the Bank, and I shall therefore be glad to have the stock in question transferred into my name.

Dated this 24th day of March, 1843.

EMMA SLACK, sole legatee and executrix of the deceased Anne Slack, No. 7, Francis-street, Tottenham-court-road."

**WILLIAM SMEE, ESQ., re-examined.** In consequence of this letter, I obtained this order, to re-transfer the sum of £3,500 from the Commissioners for the Reduction of the National Debt, to Emma Slack, and to pay the arrears of dividends to Emma Slack, spinster, of No. 7, Francis-street, Tottenham-court-road, sole executrix of Ann Slack, deceased, of Smith-street, Chelsea, spinster. This is the order, and I accordingly made the re-transfer.

**Cross-examined by MR. WILKINS.** Q. Did you see the female who called herself Emma Slack write?

A. No. The signature was not made in my presence. (The order was dated 3d April, 1843, by J. Heath, Esq., deputy governor, to transfer the said £3,500, with the unclaimed dividends, amounting to £1151 18s. 10d., to the said Emma Slack.)

**JOHN PADMORE NOBLE.** I am an assistant accountant to the Bank of England. I know Mr. Barber, I saw him at the Accountant's-office on the 7th April, 1843, a female was in company with him, who he represented as Emma Slack. He called her so to me. Mrs. Saunders is that female, to the best of my belief. I had an opportunity of seeing her features, I should say that is the party. I cannot say that I have any doubt about it.

Mr. Barber said he came for the purpose of receiving the dividends on the stock that had been transferred from the account Ann Slack to the Commissioners, and which he expected to find re-transferred, and required me to pay the amount. I turned to the book, and having found the stock re-transferred, I gave him to understand that it would be necessary for him to be identified to me, and therefore the stock-broker, or some person that I was personally known to, should accompany him for the purpose of identification.

Mr. Barber, I believe, went from the office, and fetched Mr. Philpot, the stock-broker. When he came, I required this document to be signed, (reads) "Paid, 7th April, 1843, Emma Slack, spinster, executrix of Ann Slack, spinster, deceased, known to me," and under those words Mr. Philpot has signed his name. I gave Mr. Barber a memorandum, which enabled the party signing as Emma Slack to receive the amount of the dividends, amounting to £1,150 odd, from the chief cashier. It was merely a memorandum that passes from one office to the other, and which enables him to get the order for £1150 odd, unclaimed dividends due on Ann Slack's account.

**Cross-examined by MR. STONE.**

**Q.** What time in the day was it when Mr. Barber, and the person of the name of Emma Slack, came to your office?

[A.] I should say about one o'clock in the day. There was nothing particular out of the ordinary course of business which took place on that occasion, that I am aware of. It was the usual routine. The female may have been perhaps ten minutes or a quarter of an hour in my presence. I should say a quarter of an hour at least. She did not, that I recollect, make any observation to me. I do not think she made any observation. I do not remember hearing her speak at all.

I saw her next at the Mansion-house. I went there for the purpose of seeing her. Many other persons came to my office in the course of that year, to transact similar business. Fifty or more, it may be 100. There was something that attracted my attention to her. She remained at a distance, and appeared somewhat lame, or leaning as it were on one side. She was standing up. She had a veil on, and was dressed in black, I think. There was a particular leaning of her form, as if labouring under some infirmity. I think the veil was partly down, not completely. I recollect that it was a black veil.

**Cross-examined by MR. WILKINS.** **Q.** Did you see Emma Slack write?

A. No.

**MR. ERLE.**

**Q.** Had you an opportunity of seeing her features?

A. I had.

**COURT.** **Q.** Do you mean positively to swear she is the woman, or only that you believe it?

A. I have no reason to doubt her being the party. I entertain no doubt in my own mind that she is the party that came.

**THOMAS BROS.** I am assistant to the chief cashier at the Bank of England. On the 7th of April last, this authority was brought to me to, [sic] give orders for the payment of some dividends, amounting to 1100l. odd. I signed the order. I did not get this from Mr. Noble. It is left in the Cashier's office, and when the parties come for it, it is brought to me and I sign it. It was brought to me, and I in the course of business there signed the order, on the 7th of April, 1843, for the payment of unclaimed dividends in the Long Annuities, amounting to 1151l. 18s. 10d. The amount due on the stock that had been transferred. That is to enable the party to take this to the cashiers of the Bank, at the Drawing-office, and receive the money. That would be the last thing before taking the money. When I give an order of that sort this book is produced, and I take an acknowledgment from the party of the receipt of that order. It is signed Emma Slack, spinster, sole executrix of the said Ann Slack, spinster, deceased. Seeing Emma Slack had signed it in the book was my authority for signing this order. The party who pays it does not come before me. There is a counter at the office, but I am a considerable distance from it.

**Cross-examined by MR. WILKINS.** **Q.** Did you see the signature of Emma Slack written?

A. No, I saw it was written.

**COURT.** **Q.** The order shows whose stock it is that is about to be paid, and who received it?

A. Yes, it is the unclaimed dividends of Ann Slack paid to Emma.

**Cross-examined by MR. STONE.**

Q. Where was this book signed?

A. At the counter of the chief cashier's office, and from thence brought to me with this order.

**ROBERT GUNSTON DOVER.** I am a clerk in the Drawing-office of the Bank of England. This order to pay was brought to me on the 7th of April, I believe; I am not positive as to the date. I merely cancelled it, and passed it to the next clerk for payment. I saw that there were two persons who brought it, a man and a woman. I enquired how it should be paid, and I think the man referred me to the back of this document (reads). It is "Gold, £600; notes, four £100 and one £100;" - "notes, twenty-five," seems to have been rubbed out, and the "one £100" inserted in its stead. There remains £50, but it does not appear in what notes that was paid. I merely marked it part bank-notes and part money. The man had a small bag to take the gold in; I told him that would not be sufficient to hold that quantity of gold he asked for. Upon that he went away, and procured a, larger one. The next clerk paid it. I do not know who these persons were.

**MR. DONALD re-examined.** This writing in pencil, at the back of this order, "Gold, 600l., notes, four £100l" and so on, I believe to be written by Mr. Barber.

**WILLIAM OBADIAH WHEELER.** I am a clerk in the Drawing-office of the Bank of England. I have been acquainted with Mr. Barber's handwriting three or four years. I have paid checks of his. This pencil writing at the back of the order, to pay "Gold 600l., &c.," I should say is Mr. Barber's handwriting, I believe it to be so.

**Cross-examined by MR. WILKINS.** Q. Do you know Mr. Bircham's writing?

A. I have seen it, I am not much acquainted with it. The handwriting at the bottom of this application to re-transfer, "Francis-street," I should certainly not recognise to be Mr. Bircham's. I will not say I do not believe it is (looking at a letter in reply to Mr. Offley's,) I cannot give an opinion on that letter. I am not so familiar with Mr. Bircham's handwriting as I am with Mr. Barber's. Very few checks of Mr. Bircham's have come under my inspection. I cannot enumerate the number.

**GEORGE WOLFE GOUGH.** I am a clerk in the Drawing-office of the Bank of England. On the 7th of April, 1843, an order for £1,150 dividends was presented to me to be paid. I paid it according to the directions at the back of the paper. A man and woman presented it, and came for the money. I do not recollect who the man was. I believe Lydia Saunders, to the best of my belief, to be the person I paid it to.

**Cross-examined by MR. STONE.** Q. How do you know her name is Lydia Saunders?

A. She has been pointed out to me as Lydia Saunders when I saw her at the Mansion-house. She was not pointed out to me as Lydia Saunders, I only knew her as Lydia Saunders after she was taken before the Lord Mayor. I cannot say who pointed her out to me as Lydia Saunders. It was not Mr. Weir I believe. It was one of the persons in the court. It was in general conversation. To the best of my recollection the parties came to me about half-past one or from that to a quarter to two o'clock. I think the man spoke to me on the subject of the payment, and I think the man received the money. I believe the woman spoke to me. I think she did, to the best of my knowledge. She asked how the money should be received. I did not see that on the back until it was pointed

out to me. I think it was the man pointed that out. I should say the woman did not tell me how it was to be paid, after the man pointed that out to me. I cannot now recollect what she said. No other persons came to me that day to draw money for unclaimed dividends. It is impossible to say how many came for other money. I see by my book forty other persons received money from me that day, but there was only one unclaimed dividend. The principal part of the payments of that day were to bankers' clerks and brokers. I cannot tell, with or without my book, whether I paid to any woman that day. I had never seen the person before. I had never seen Lydia Saunders till I saw her the other day at the Mansion-house. She was not pointed out to me. She was afterwards. I did not give any evidence before the Lord Mayor. I did not know it was her until she was pointed out.

**COURT.**

Q. Then you did not pick her out?

A. I did pick her out. The question was asked me whether I could tell the woman? I said, "I believe, to the best of my belief, that is the woman". There was no name mentioned to me at that time. Afterwards I was told it was Lydia Saunders. I believe she stood at the side of the bar. I think just by the door.

**MR. STONE.**

Q. In custody and under charge?

A. I do not think she was. Of course she was in custody, but not in the dock. She was by the side of the door. I did not see an officer by the side of her. I was not examined before the Lord Mayor.

**MR. ERLE.**

Q. When you paid the money did you have the order signed?

A. It came to me already signed. It was not signed in my presence. It is not usual to sign it in the presence of the party paying.

**Cross-examined by MR. WILKINS.**

Q. What makes you believe it was the man that pointed out the directions at the back of that paper?

A. I believe it was. There was a man came with the woman, that is all I recollect. I would not swear to the man. The lady had not a white veil on. She had a fall, I believe black, over the bonnet, something like crape over the front of the bonnet. All the entries in this book are in my hand writing. I know the firm of Drewett and Co. I have no doubt I paid them something on that day, if the entry is made there. I do not remember paying them anything on that day. I do not remember seeing anybody there from that firm on that day. I know Messrs. Goslings. I do not know Mr. Bircham's handwriting.

**MR. ERLE.**

Q. Look at your memorandum, of April the 7th; do you remember your having made a payment to Drewetts when you see your memorandum?

A. Yes, seeing this I remember making a payment upon that day. I keep an account of the payments that I make. I do not remember it, but I have not the least doubt I made the payment, because I see it here. It is usual to pay unclaimed dividends to a large amount, but not to pay a large amount

in gold. My attention was called particularly to it by that. About twelve or fifteen months previous to this transaction there was a large payment in gold. That was unclaimed dividends.

**MR. DONALD re-examined.** This address, "Tottenham-court-road," under the signature of Emma Slack,  
I believe to be Mr. Barber's handwriting.

**Cross-examined by MR. STONE.**

Q. Pray, who wrote these words, "Emma Slack?"

A. I cannot say.

(Mr. Smee's certificate of the transfer of £3,500 Three per Cent. Consols, dated the 3rd of April, 1843, formerly standing in the name of Ann Slack, of Smith-street, spinster, from the account of the Commissioners of the National Debt, to Emma Slack, of Francis-street, Tottenham-court-road, spinster, Was here read, Also, the order to pay £1,151. 18s. 10d. Being the unclaimed dividends, on the same, on the back of which was written "Emma Slack, executrix, 7, Francis-street, Tottenham-court-road;" and, in pencil, "gold £600, notes £400, £100, £50, £1. 18s. 10d.; total, £1,151. 18s.10d")

(Adjourned.)

Wednesday, April 17th.

THE QUEEN AGAINST BARBER AND OTHERS CONTINUED.

**CAPTAIN FOSKETT re-examined by the COURT.** I think nothing was said by myself or Mr. Baxter to Mr. Barber respecting the residence of Miss Slack. I had written to that effect. When I first called on Mr. Barber I announced myself as Captain Foscett, and as having received letters from him on the subject of Miss Slack's affairs. I do not remember whether anything was said about my residence, or where Miss Slack had ever resided. In the statement I made yesterday I may have stated an observation as made at the second interview which passed at the first; I cannot be quite certain as to that, I gave it as it occurred as well as I could. I do not remember at either conversation anything being said about where Miss Slack was living at that time, or had lived.

**WILLIAM PHILPOT.** I am a stock-broker. I have known the prisoner Fletcher about ten years, and have known Mr. Barber four or five years. I remember a few days before the 7th of April, seeing Mr. Fletcher in the Rotunda at the Bank. He said that Barber had got a good job for me. He did not tell me what it was. He did not say it was to transfer stock, but I understood so. I do not know that it was mentioned.

On the 7th of April I saw Barber at my office in Tokenhouse-yard. There was a lady in his company. I had never seen her before. She was introduced to me by Barber by the name of Emma Slack. It was the prisoner Lydia Saunders. Barber gave me directions to sell £3,500 Consols, standing in the name of Emma Slack. I do not recollect Lydia Saunders making any observation. Barber told me Mr. Fletcher was expected to meet them.

Barber, Mrs. Saunders, and I proceeded over to the Bank, to the Accountant-General's Office for taking unclaimed dividends on £3,500 Consols. I applied for an order for those dividends, which was given to me. I signed to the identity of Emma Slack. It is usual for a person applying for

dividends, to be identified by a broker. I signed these words, "known to me". This is my signature to the identity.

I then went with Barber and Emma Slack to the chief cashier. The order was presented by me, to the best of my belief. We then got an order to go to the drawing-office for the money. That order (looking at it) was given to Barber. I did not observe any pencil writing at the back of it. I left Barber and Mrs. Saunders in the drawing-office to take the money.

I then went to put forward the transfer for the £3,500 Stock. I had arranged with Barber to meet again in the Rotunda. I sold the £3,500 to Clement Smith, a stock-jobber, for £3,386. 5s., which he paid to me in notes. I have a memorandum here of bank-stock, cash £3,382, after deducting my commission, which was £4. I think I received three £1,000 notes. The others I do not recollect.

After receiving that, I came to the Rotunda. On coming from the Drawing-office, before I went to sell, I saw Fletcher in the Rotunda, and observed to him that there was £1,100 in dividends that was being received. I then went and sold the stock, and came back to the Rotunda, and found Barber, Mrs. Saunders, and Fletcher there. I gave the money to Mr. Barber, I heard a conversation between the three, about changing a £1,000 note for gold. I cannot say who spoke. They then left me, and went away together, where to I do not know. I went to my office. They were all three present when I gave the money to Barber. I gave him the same notes as I received from Clement Smith.

**Cross-examined by MR. GREAVES.**

Q. How many times have you been to the Mansion-house when Fletcher was examined?

A. But once. I may have been twice. I was communicating with the attorney for the prosecution while Fletcher was under examination. I was furnishing information to Mr. Freshfield, while Fletcher was being cross-examined by Mr. Clarkson. I swear Fletcher used the words, "a good job," and that the word "introduce" was used. He could introduce me to a good job, something to that purport. He had got me a good job. I mentioned that here today. That was the purport of what he said. I cannot exactly recollect whether I named that on my examination in chief. The words were to the purport that I should have a good job. None of the prisoners were present when I received the money from Clement Smith, that I recollect. I received it in the Bank, but not in the Rotunda. Very probably in the Consol-office. I do not know in what office I received it.

**Cross-examined by MR. STONE.**

Q. Where was it Fletcher told you something about a job?

A. In the Rotunda. Nobody was present. I saw Barber with the lady a fortnight or three weeks after. I had never seen her before. It was an ordinary transaction, which very frequently occurs. If a lady or gentleman comes and I know them, I identify them. Nothing occurred different to what does on other occasions.

They remained in my office about five minutes, while I was writing the instructions for the sale. I do not recollect speaking to her or she to me.

I do not recollect seeing Lydia Saunders from that time till she was at the Mansion-house. I was aware that a person named Lydia Saunders had been taken up as the person representing Emma Slack. I do not recollect whether she was dressed the same then as on the 7<sup>th</sup> of April. I did not



notice whether her veil was down when she came to make the transfer. She had a long veil. I saw it down when she came to the Bank. She was dressed in black at the Mansion-house, and had a black veil. It was not by the black veil that I knew her.

Mr. Barber and Emma Slack walked over to the Bank, arm-in-arm, to the best of my recollection, and I before them. I did all the work at the Accountant-General's office. We went from there to the cashiers. I think Mr. Barber signed the paper there. I did not observe whether Emma Slack walked lame or not. I had no reason for noticing her. I thought it a straight-forward, ordinary transaction. There was nothing to direct my attention to it further than changing £1,000 note into gold. That drew my attention. I heard no reason assigned for that. It is not at all unusual to get gold for notes. I have identified a great many other persons since the 7th of April. I may have identified 300 persons without knowing them, being introduced by a person I did know.

**Cross-examined by MR. WILKINS.**

Q. May I ask whether your memory is pretty good?

A. I can recollect I dare say some things better than others. I will not swear one way or other whether Mr. Barber took any part in the conversation about changing the note. He must have heard it, because he was present. I recollect that, because it was at the time I paid him the money. That was in the Rotunda. That is not generally speaking a scene of confusion. It has been so in former times, but it is not now. It was not dividend time. They were due, but not payable. There were very few people there. I remember that distinctly. I was not examined at the Mansion-house. I was present four or five times. I missed some. That is correct to the best of my belief. I do not remember any other transaction on the 7th of April, not on the 6th or 8th. I consider that I have had three transactions with Barber. I may have had more. I will swear I have had more than one other transaction with him. There was one on the 29th of April, 1843. I sold £100 reduced, for Mary Anderson, where Mr. Barber was the attorney. I have no recollection of his attending to that, but by my book. I recollect the transaction of the £3,500 Without the book. I have a memorandum over the account, of the name of Barber. I cannot describe Mary Anderson. I have no recollection at all of her. On the 1st of June, 1842, I had a transaction with Mr. Barber. It was £12,010 Consols, in the name of Thomas Hunt, sold. I have no recollection of that except from my book. The entries are my own. I do not recollect any other transaction with Barber.

Q. Were Barber and Bircham the attornies?

A. I do not know. Here is only Barber's name to the power.

**MR. ERLE.**

Q. Did you see Emma Slack's features at all while you were there?

A. Yes, and when she was at the Mansion-house, she was the person I had formed in my mind as Emma Slack. I saw her countenance when, she was at the Bank with Barber, her veil was up then. I cannot say at what part of the time that was. The only matter which drew my attention was the proposition to change the £1,000 note for gold. I never recollect a woman changing so large a note for gold. When I identify strangers I rely on an introduction from parties I have done business for. I relied on Mr. Barber in this case. I keep an account of transactions which take place. I should not know of selling stock on any other day for Barber except by my book. I know I have sold stock on other occasions, but cannot particularize the amount or day. I only knew Hunt from the introduction I had. Hunt was a stranger introduced to me. He was the seller. The amount was £12,010. Mr. Barber introduced him to me.

**JAMES BALLARD.** I am a clerk in the 3 per Cent Consols office at the Bank. I am the attesting witness to the transfer of £3,500. I saw it executed by a person who signed this "Emma Slack". I have no recollection of the transaction. (The transfer was here read from Emma Slack, of Francis-street, Tottenham-court-road, spinster, to Charles Smith Mortimer.)

**MR. PHILPOT re-examined.** This transfer is not signed by me, but by Mr. Matthews, who assists in my business.

**JOHN FRANCIS MATTHEWS.** I signed the name of Mr. Philpot to this transfer of Emma Slack to Mortimer. I know both Smith and Mortimer. They were not there at the time.

**CLEMENT SMITH.** I am a stock jobber. On the 7th of April, 1843, I purchased £3,500 Consols, of Mr. Philpot, for £8382. I paid for it in Bank notes. I did not take the numbers of the notes, nor the description, but I have not the least doubt it would be three of £1,000, and £382. In small notes. I am the same as positive there was three £1,000 notes. I recollect taking four £1,000 notes, and to the best of my belief I paid three £1,000 notes. I received the four £1,000 notes from C. S. Mortimer. They were the only £1,000 notes I had that day. I paid the other note into Prescott's, the bankers, to the account of Henry Smith. I did not take the particulars of that note.

**Cross-examined by MR. GREAVES.**

Q. What was Philpot's commission on the sale?

A. I have nothing to do with that. I paid him £3,382. The stock came to £3,386. 5s. But I had another transaction with him the same day of £125 3 1/2 per Cent. I am quite positive as to the number of £1,000 notes I had that day. I cannot exactly recollect the number or amount of the other notes. I only mark the notes. To the best of my belief I had three notes of £1,000. I have not the least idea how many I had that week, nor on any day, except on the 7th of April, in that week, unless I had my memorandums with me. I know the day of the week, because I have it before me. my attention was first called to this about six weeks or two months ago. I was not examined before the Lord Mayor.

**COURT.**

Q. Is it an unusual thing for you to have so large an amount of Bank notes as thousands?

A. Certainly not. I am in the habit of having £5,000 or £10,000 about me. I cannot remember unless I have my account with me. £1,000 notes frequently pass through my hands every week.

**MR. ERLE.**

Q. When your attention was drawn to this five or six weeks ago, did you examine your accounts and memorandums?

A. I did, and ascertained that I had only four £1,000 notes on the 7th of April, and I had them from Charles Smith Mortimer. I bought the stock of Philpot, and it was transferred to Mr. Mortimer.

**COURT.**

Q. What accounts are you alluding to, when you say in reference to them you had four £1,000 notes on the 7th of April, and four only?

A. I allude to my own accounts.

**MR. ERLE.**

Q. When your attention was drawn to this inquiry, did you examine your books and papers to see if you had more than four £1,000 notes on the 7th of April?

A. Yes. I have the account before me. I had not any so large as £1,000, except the four I had from Mortimer. This is the original paper made on that day. I have kept it since. I have no description of the notes, but I remember the circumstance of going to Mortimer, and sending to him for these notes. After I looked at the account I remembered the circumstance. I am the same as positive that I received four £1,000 notes from him. I will swear it, to the best of my belief. I remember having four £1,000 notes of Mr. Mortimer.

**CHARLES SMITH MORTIMER.** I am a member of the Stock Exchange. My attention has been called to the 7th of April, 1843. On that day I lent Clement Smith £3,000. I paid him notes to the amount of £4,000. I know there were four notes of £1,000 each. I received two of the £1,000 notes from Mr. Brewer, and two from White. I have not the numbers.

**Cross-examined by MR. GREAVES.**

Q. Does not a great deal of money pass through your hands?

A. Yes. I always put down in my book if notes are otherwise than £1,000. I know it, because I have no entry that they were the £1,000. I do not put down £1,000. I put down the gross amount then. (producing his memorandum.)

Q. Your memorandum says, "Mr. Brewer, £2,000; White, £2,000; Bank, £4,000."?

A. Yes. That shows me they were four of £1,000 each. I always make a memorandum when they are otherwise than thousands. This entry of £600 were paid in a check, and this £1,452 was paid with a check. I received the money from Brewer on the 7th of April. The name "Brewer" is written over the line. That was done about a month ago. The whole memorandum, except that, was made at that time, which was written since this inquiry. I ought to have done it at the time. I did it merely to correct my book. I never thought of looking at the book till this inquiry. I received the other two £1,000 notes the same day. There is a memorandum of that.

**EDWIN JOHN BREWER.** I am a member of the Stock Exchange. My attention has been called to the 7th of April, 1843. On that day I sold £2,300 Consols to Edward Pearce, for which I received two £1,000 Bank notes, Nos. 91295 and 91767, and sundry smaller notes to make up the total. I have not the dates of the notes. I received them that day. I regret to say there is a mistake in the number of one of the notes. I have seen a note which, I believe, passed through my hands, from marks on it, but I have put one figure before another. (looking at a £1,000 note, No. 92195). I should say this is one of the notes I had. There is "Henry Mortimer" on it, and "E. P.," which I think are Mr. Pearce's initials, his own writing; but I have put the I before the 2 in the hurry of business. I gave those two notes to Charles Smith Mortimer, of the Stock Exchange, for their check of £2,000.

**Cross-examined by MR. GREAVES.**

Q. What memorandums are those you have been looking at?

A. An abstract of my book, devoid of technicalities. It is made from my book, which is also here. I took the numbers of the notes received of Pearce at the time they were in my possession, but not as regards giving them to Mortimer. I was asked some three months since by Mr. Mortimer whether I had given them to him. I looked at the memorandum-book, and saw I had made them up, as I call it, to pay into my banker's. I went to my banker's to see whether a check drawn by Mortimer was paid that day. There is no memorandum made about that time which shows that I paid them to Mortimer. I have a recollection of it. I did pay them to him. I have since asked Jones Loyd whether I paid in a check that day from Mortimer. I certainly had doubts whether I did pay these notes on that particular day.

Q. Are you not speaking as to your recollection of having paid these notes on that day from what you have ascertained from people since?

A. I have the numbers down, and there is Pearce's initials, and Mr. Mortimer's name, on the notes. I paid Mortimer that day two £1,000 notes for their check, and the numbers agree.

Q. Are you not speaking of what you paid that day from information you have since acquired?

A. Yes. I put the name of the person I paid to here long subsequent to the 7th of April. I put the date here the day I paid it. The memorandum was made from information I received long after the 7th of April. The note before me is the one which does not agree in the number. There is nothing in this one from which I will swear it was in my possession on the 7th of April. I would rather not swear to it, the number being wrong.

**MR. ERLE.**

Q. Turn to the entry you made at the time, 7th of April; can you say whether you had two £1,000 notes?

A. I had. I entered the name of the person I received them from. I have the initials of E. Pearce on it. I think this "E. P." is his writing. I believe the "E. P.," on the note, No. 92195, to be Pearce's writing. I did not observe that on them, when in my possession.

**MR. MORTIMER re-examined.** The name of Mortimer, on these notes, is not the writing of myself or brother, it looks like Smith's writing.

**CLEMENT SMITH re-examined.** The name of Mortimer, on this note, No. 92195, and No. 91767, are my son's writing. He puts the names of persons I have notes from on them. He is living.

**THOMAS PHILLIPS.** I am a clerk in the Accountant's-office at the Bank of England. I have searched the Bank books to ascertain whether such a £1,000 note as No. 91295 was in circulation on the 7th of April, 1848. It was not in circulation. It was paid in on the 4th of April.

**Cross-examined by MR. GREAVES.**

Q. How do you ascertain that it was paid in on the 4th of April?

A. By our ledger. It would be received by a clerk, and posted in the proper office. I never remember a mistake in the Bank books as to the day a note came in. There have been mistakes as to the numbers of notes, but they are rectified the same day.

**BENJAMIN HORNBY.** I am clerk at Messrs. Prescott's bank. On the 7th of April, 1843, [sic] £1,000 note was paid into their house, to the credit of Henry. It was No. 91491, dated Feb. 1, 1843.

**JOHN MILLER.** I am a pay clerk in the Bank of England. On the 8th of April I exchanged a lot of Bank notes, to the value of £1,580, for gold. I have my book here. The clerk who took the notes from me comes from another office. They are marked by the inspector. I do not put a mark on them.

**HENRY VENDISH LEIGHTON.** I am a clerk in the Bank. On the 8th of April I have entered some notes to the amount of £1,530. As being cashed. I received them from John Miller. Among them was one for £1,000. I did not take the number or date. I entered the name at the back, which was Slack. If a bundle of notes are brought to me, I enter the numbers of the first and last note, not the intermediate ones. The intermediate ones are identified by a number printed on them. The No. 401 is printed on these. This £1,000 note, No. 91767, was in the bundle I took that day. I know it by a mark on the outside. I received them from Miller; he cashed them, and took an account of them. The number is entered in my book. It was paid for gold. Miller pays nothing but gold.

**Cross-examined by MR. WILKINS.**

Q. How many are there besides Miller in that department?

A. I do not know; a great many. I was never so employed.

**COURT.**

Q. Are you enabled to say confidently that the bundle of notes for £1530 came from Miller?

A. Quite confident. (the indorsement on the bundle of notes was, "Miss Slack, Francis-street, Tottenham-court-road.")

**MR. STONE.**

Q. Did you observe this address on it when delivered to you? A. Yes; I have written that in the book against it. It is the last note.

**JOSEPH DERMER.** I am a clerk in the 'Tellers' office. On the 10th of April I exchanged for gold a £1,000 note in the name of Slack. I do not take the number or date, but hand the notes forward. My entry is, "Slack, £1,000," for which I gave 500 sovereigns and a ticket for a £500 note. We require a name to be put on a note before it is paid, and I put that name in the book. The entry shows there was such a payment made to a person named E. Slack.

**Cross-examined by MR. STONE.**

Q. Who did you pay it to?

A. I do not know. The book does not tell whether it was man or woman.

**Cross-examined by MR. GREAVES.**

Q. The entry is "Slack" alone?

A. Yes. On the ticket for the note is "E. Slack". It is a copy from the note. The name was on the note before it was brought to me. That was on the note for which I gave 500 sovereigns and a ticket for a £500 note.

**ROBERT HYETT.** I am a clerk in the Bank. On the 10th of April I received £1,000 from Dermer, which he had cashed for 500 sovereigns and a £500 note. I took down the number of the note which I got from Dermer. It was 92195, dated the 1st of Feb.

**WILLIAM TAYLOR.** I am assistant pay clerk in the Bank of England. On the 10th of April, 1843, I had a ticket for a £500 note, in the name of E. Slack, drawn by Dermer. The number of the note I gave for it was 41856, dated the 2nd of Jan., 1843. I received the ticket, entered, and posted it. my partner gave the note.

**JOHN WILLIAMS.** I am a clerk in the Bank. I gave the £500 note mentioned by Taylor, for this ticket, to some person in the name of Slack, No. 41856; who to I cannot say.

**FREDERICK NELSON.** I received a bundle of notes which had been paid in gold on the 18th of April, 1843, from Dermer. I gave them to Vansommer to be entered.

**Cross-examined by MR. STONE.** Q. What quantity was it?

A. I cannot say how many.

**JOHN VANSOMMER.** I am a clerk in the Bank. On the 18th of April I had a £500 note, No. 41856, dated the 2nd of Jan. 1843. It was in the Bank that day.

**JOSEPH DERMER.** That note was exchanged by me for gold on the 18th of April. I have the name of "Slack, £500". It was only one note, I am sure.

**Cross-examined by MR. WILKINS.** Q. Is your department confined exclusively to giving gold?

A. Gold and silver. I may sometimes give as much as £5,000 or £10,000 in gold in one lot to a banker. A great many country people take gold in various amounts.

**EDWARD GRATAN.** I am a clerk in the Southwark branch of the London and Westminster Bank. I have known Fletcher about four years. He keeps an account there. I am well acquainted with his writing. The name, "Emma Slack, 7, Francis-street, Tottenham-court-road," on this £500 note, is his writing; also, the same name and address on this £1,000 note, No. 92195; and on this £1,000 note, No. 91492. On the 10th of April, 1843, £500 in gold was paid in by Fletcher in person to the credit of his deposit account. On the 18th of April, 1843, £480 in gold, and £20 in notes, making £500, was paid in by Fletcher in person, and placed to his account. On the 13th of April, 1843, £1,000 in gold was paid in to his credit, on his deposit account, by Fletcher in person.

**JOHN MILLER re-examined.** On the 13th of April I cashed a £1,000 note with 1,000 sovereigns. I do not know the number of the note.

**FREDERICK NELSON re-examined.** I received the note from Miller and handed it to Vansommer. I received a parcel of notes from the witness and handed the whole to Vansommer. They were all paid notes. I cannot give the numbers.

**JOHN VANSOMMER re-examined.** On the 13th April the £1,000 note in the name of Slack cashed by Miller, was 91492, 1 Feb. This is the note.

**MR. GREAVES to MR. GRATAN.**

Q. How long has Fletcher kept an account with you?

A. Since Dec. 1838.

**Cross-examined by MR. WILKINS.**

Q. I believe he kept a very respectable account?

A. He did not keep a large account. He kept a respectable one. (Several letters were here put into the witness's hands, some of which he identified as Fletcher's handwriting, but none of them were read.)

**GEORGE GORSUCH.** I am at present shopman in the employ of Messrs. Halling, Pearce, and Stone. On the 29th March, 1843, I went into the employ of Mr. And Mrs. Dorey, in Oxford-street, and continued there three weeks. Mr. Dorey's name is Josiah, and he is the husband of the prisoner.

On Friday, the 7<sup>th</sup> April, 1843, Lydia Saunders, who is Mrs. Dorey's sister, came to the house in a cab in company of Mrs. Dorey, towards the latter part of the day. I believe after five o'clock. She had on a blue and black cloth check cloak, and a black velvet bonnet. The cloak was not taken off in my presence. She staid till the following Monday.

The morning after she arrived Mr. Dorey showed me a £1,000 note in the shop, over the counter, as a curiosity not seen every day. Mrs. Dorey and Mrs. Saunders were not present.

Shortly after Mr. Dorey had shown me the note, Mrs. Saunders came into the shop from up stairs, passed through it, and went in an omnibus towards the City. It was in the early part of the morning. I should say ten, or it might be eleven o'clock. I saw her take the omnibus. She returned, it might be two hours afterwards. I really cannot say. I noticed that she brought back with her what I considered to be a canvas bag, which I judged from the sound contained gold. I should say about the space containing a thousand sovereigns, from what I have seen in silver.

After Mrs. Saunders came back she looked out several articles, I believe to take away. There was a particular dress which she mentioned was for her daughter. It was a striped silk. A shawl and some other articles were selected at the same time.

I heard Mrs. Saunders tell Mr. Dorey that she was going to Bristol on the Monday. That was in the shop before she left.

During the time I was in Mrs. Dorey's employ I had an opportunity of seeing her write, and becoming acquainted with her handwriting. I believe the name "Miss Slack, 7, Francis-street, Tottenham-court-road" on this note No. 91767, to be the handwriting of Mrs. Dorey. (looking at a gown produced by Daniel Forrester). This is the same pattern and colour as was purchased by Mrs. Saunders for her daughter. At that time there might have been one thousand yards of it.

**Cross-examined by MR. STONE.**

Q. Did you reside in the house with Mr. Dorey?

A. Yes, I lived with him. I had never seen Mrs. Saunders before the 7th of April. She was not introduced to me at the time she came into the house. She was, the first time I went into the house, from the shop, the same day she came, after five o'clock, she was introduced to me as Mrs. Dorey's sister from Bristol. Mr. Dorey had informed me before she came to the house that Mrs. Dorey's sister was coming to see them from Bristol.

I am not aware how long Mr. Dorey had been married. I believe from his statement about a month or six weeks. I was not with him at the time he was married.

Mrs. Saunders did not take off her bonnet in the shop. I noticed afterwards that she was dressed in black. She was in black during the whole time she was there.

I noticed a something, I thought an imperfection in her walk. That she did not walk quite firm. It might be she had corns.

I did not breakfast with her on the next morning. I saw her on the 8th. I dined with her. She was there, as far as I could judge, on a visit to her sister. I did not breakfast or dine with her on the Monday. It is the custom in small houses of that description for the assistants to dine at a separate table from the employers. That was the custom there. I saw her on the Monday morning before twelve. It might be half-past nine, ten, eleven, or half-past eleven. I believe it to be soon after nine. I generally got into the shop rather before eight.

I am not aware that I saw her on the Saturday before I saw her pass through the shop. That was in less than half an hour after Mr. Dorey showed me the note. He attended in the shop himself. I cannot recollect whether Mrs. Dorey went out that day. I saw her in the shop on the Saturday, but I cannot recollect whether she went out. Mrs. Saunders got into the omnibus at the door. I did not hear what she said. She only got into the omnibus and went away. She returned in less than two hours. I cannot state the time. I have no recollection whether I saw Mrs. Dorey from the time Mrs. Saunders left until she returned. Mrs. Saunders merely passed through the shop on her return. I had an opportunity of looking at the bag in her hand as she passed. I cannot say whether she had a cloak on. I believe she had. I was behind the counter. I cannot say what I was about. I was perfectly disengaged. She merely walked straight through. I cannot say which hand the bag was in.

I left Mr. Dorey of my own accord because it did not answer my expectations. It does not at all concern this case. I had no misunderstanding or dispute with Mr. or Mrs. Dorey.

It was on the Saturday that Mrs. Saunders looked out some articles in the shop. I am not aware whether it was before or after she went out. I believe it was after. I swear I was not dismissed from the service. I left on the 19th April, 1843. I cannot recollect what passed that induced me to go. Goods were looked out three or four times while Mrs. Saunders was there. They were looked out also on the Monday. I understood she was to leave on the Monday by the two o'clock train. I saw her leave about one, or half-past. It was about the middle of the day. I never saw any bag in her possession except at the time she passed through the shop.

**MR. ERLE.**

Q. Did you see her at all except in the shop, and when you were dining with her?

A. Yes, I saw her in the shop, and when I was dining with her. She lived up stairs with the family. When she came back with the bag she went up stairs to the apartment of the family. I judged the bag to be a canvas one. I saw it. It was the colour of a canvas bag, and the sound I judged to be gold. I repeatedly saw her while she was in the house, conversed with her at times, and became acquainted with her.

**MR. STONE.**

Q. Might it not have been a carpet bag she had?



A. Oh no, I am sure of that. I should think it was about that size (about a foot), the shape a bag generally is. Bags with gold are not generally very deep. I have no recollection of the depth, more than I thought it was a bag containing gold of the usual size, such as a cash-bag. I have seen bags given at bankers'. I believe it was not yellow. It was a lighter colour. I cannot swear to the colour.

**MR. ERLE.**

Q. Have you seen such bags as that for money?

A. I have.

**ELIZA ROSSER.** I am now living as servant with Mr. Taplin, a solicitor. I have been living with him little more than ten months. Before that I was living with Mr. and Mrs. Saunders. They carried on business as fishmongers at Bristol. I think about eight days elapsed between the time of my leaving Mr. Saunders and going to Mr. Taplin's. I left Mr. Saunders because I thought I could better myself. They gave me a month's-warning. Before Mrs. Saunders gave me warning she had been in London for about two months. I should suppose she gave me warning about a week after she came back. I cannot exactly say.

She brought back with her three silk dresses. They were not made up (looking at the silk dress produced by Forrester). I cannot say that is the silk dress. I think that has been washed. She brought home something similar to this, but I cannot say. It was such a pattern as this appears to be. I cannot speak to it. She brought three dresses, for herself and two daughters. One of those daughters was living with Bucknell and Spark, drapers, at College-green, Bristol. During the time Mrs. Saunders was in town Mr. Saunders left Bristol for a few days. He went at the latter part of the week, and came back at the beginning of the next week. Mrs. Saunders returned to Bristol about a week after that time. He came back by himself a week before her. I never saw Mrs. Dorey but once. She was at Bristol for about six weeks, staying with Mrs. Saunders. That was, I should say, a month before Mrs. Saunders went to London. I cannot say exactly.

**Cross-examined by MR. STONE.**

Q. Are they not carrying on business in a very large way in Bristol as fish dealers?

A. Yes, one of the largest fish shops in Bristol. Mr. Saunders was not frequently from home while I was there. I cannot say how often he was away. He might come to London and stay one night and return next day, once in a month or six weeks. He has not been away for a month or three weeks to my knowledge. While Mrs. Saunders was away he was at home attending to the business, during the whole of that two months, except that short time. I do not know whether Mrs. Dorey was married when she was at Bristol. She was called Mrs. Dorey, but I do not know whether she was so or not.

**Cross-examined by MR. WILKINS.**

Q. Do you know Mr. Saunders's writing?

A. No, I have seen him write, but I never took any notice of it, and I should not know it again. I cannot write, or read writing.

I do not know whether Mrs. Saunders was at Bath in Jan. I do not know of her going to Bath. She was not away from home except when she went to London. I do not recollect it. I will not swear it. Mrs. Saunders had a blue and black plaid cloak made, to go to London in. I do not know in what month she went away to go to London. It was in the winter season. Mrs. Dorey had left

before that. I cannot say that I ever saw Fletcher there. I do not know him. As far as I know I have never seen him.

**EDWARD GILL.** I am a clerk in the bank of Messrs. Stuckey and Co., of Bristol. The prisoner William Saunders had an account there. It was opened in Sept., 1842. He has an account with us now. Since he opened it he has frequently been in the habit of bringing money to pay in to his account. He has generally brought cash, notes, and gold.

He once brought a large quantity of gold. That was on the 5th of Sept., 1843, he brought 1,000 sovereigns. I said to him on that occasion, "Really, Mr. Saunders, it appears as if there was a mint in your house". I am not aware that he made any reply. He had before that brought in thirty or forty sovereigns at a time, perhaps less, and sometimes more, at different times during the summer. I noticed that some of them were new, because I made the observation at the time that I wished other customers brought in such nice gold as he did. I apply that, not to the £1,000, but to former credits. To the best of my belief all the 1,000 sovereigns paid in on the 5th of Sept. were new.

**Cross-examined by MR. PHINN.**

Q. Were you at the counter yourself receiving the money?

A. I was the cashier. The whole amount paid in that day was £1040. 11s 6d., of which £1,000 was in sovereigns. I am quite sure. I made the entry at the time. I have it here. It is in my handwriting.

**Cross-examined by MR. GREAVES.**

Q. Just look at that note (£1,000, No. 92195,) do you know that handwriting at the top?

A. Yes. I do not know Fletcher's handwriting. I should say this is Mr. Saunders's handwriting. I believe it is. I should say the handwriting on this £500 note, No. 41856, is written by the same person. I believe the endorsement on this note No. 91492 is written by the same party. I am well acquainted with Mr. Saunders's handwriting by seeing his checks.

**Cross-examined by MR. STONE.**

Q. Did you ever see him write in your life?

A. Yes, credit tickets. I have never seen him write checks. (looking at the notes again). These do resemble Saunders's handwriting. I saw them in Bristol. They were shown to me by Mr. Weir. I do not exactly recollect the date. I told him I believed them to be Mr. Saunders's writing. I do not recollect the reply he made.

**Cross-examined by MR. WILKINS.**

Q. Look at this writing, without turning it over, especially these two words, "Miss Slack," and tell me whose writing you believe it to be?

A. Looking at it indiscriminately I should say it was Mr. Saunders's writing. I do not know Mrs. Saunders's writing.

**MR. ERLE.**

Q. You saw Mr. Weir at Bristol, was that at the time an examination was going on about some notes that had been obtained?

A. Yes. Mr. Weir showed me certain notes, and asked me if I knew the writing. The name written on the top I believed to be Saunders's writing on comparing it with some of Mr. Saunders's.

(looking at some others). I believe this to be Mr. Saunders's writing. I did not know what case Mr. Weir was inquiring about. I know I saw a letter signed by Hunt. The name Thomas Hunt on these notes I believe is in Saunders's writing. This is the letter I saw. It is signed Thomas Hunt. I believe the notes Mr. Weir showed me then had "Thomas Hunt" endorsed on them, those were the notes I believed to be endorsed in the handwriting of Saunders, and these I believe are in the handwriting of Saunders, judging from his other writing. I have seen these notes endorsed Emma Slack before, and I believe it is William Saunders's writing, by the resemblance to his handwriting. There are two for £1,000, and one for £500.

**DANIEL FORRESTER.** I was first employed in this case in respect of Mrs. Dorey. I went with Miss Neville to Oxford-street about the 4th or 5th of Jan. I went to Bristol to see for Mrs. Saunders. I did not find her there. I understood she was not there. I did not apprehend her. I got this dress from the daughter at the house of Bucknell and Spark, linen-drapers, College-green, where she was living. She gave it me. I had been there before, and asked for Miss Saunders, and she had spoken to me on a previous occasion. They stated she was up stairs, and she was fetched down.

I went to Mr. Barber's office, and among other things found this certificate of the death of Ann Slack on a table there. It was handed to me by Mr. Bircham with a parcel of other papers. I cannot say exactly that I saw it on the table, but it was passed to me with other papers. no doubt they were on the table.

I went to Bristol again in Feb. I made all the search I could there, and in the neighbourhood to find the Saunders's, but could not find them or hear of their having been there for some time. my earliest visit was in Jan.

**Cross-examined by MR. WILKINS.**

Q. You found, I believe, a great many papers at Mr. Barber's office?

A. Yes. Mr. Barber had not been in custody perhaps an hour when I went there.

I left a great many papers behind. All the papers I produce were found in his office. The papers connected with Slack's transactions were tied up together, with an inscription on the back, stating, that they referred to Slack. I think this paper, "Re Slack, probate of the will of Ann Slack, spinster, deceased," was the outside one. I do not know Mr. Bircham's writing.

I had been set to watch Mr. Barber's movements for some time before I went to his office. I cannot charge my memory with the length of time. I think it might have been the middle of Nov., to the best of my recollection. He was arrested on the 9th of Dec. I had seen him go to his office during that time, I will not say most days. I was not there every day myself. I think I did not see him come to his office at the most six times. I was not there always of a morning, I sent some one else. That person is not here.

I took away from Mr. Barber's office his diary of 1843. I handed it to Mr. Freshfield, by Mr. Barber's wish. I forget now, exactly, whether it was Mr. Giddy<sup>18</sup> or Mr. Barber. Mr. Giddy was the solicitor for Mr. Barber, in the first instance, I believe. I did not hand to Mr. Freshfield all the papers I seized. I handed some to Mr. Weir since I have been here. Yesterday I think it was. I do not know of any application being made to me to let Mr. Barber have copies of those papers. There had been an application on the part of Mr. Giddy, to the best of my belief, at the beginning,

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<sup>18</sup> In fact, Mr Gedye.

to inspect those papers, which he did, and saw them. no application has been made to me for copies of those papers, nor in my hearing. I have not seen Mr. Barber with a tearful eye ask for them. I do not recollect that I ever heard him ask for them. I gave a great many papers up to Mr. Giddy, which I took to the Compter to Mr. Barber, and to the best of my recollection, I offered them to Mr. Barber, and he refused to take them. I then went into the other office, and gave them to Mr. Giddy. I think I have had about ten papers of Mr. Barber's in my possession. Mr. Freshfield and Mr. Weir knew I had them. They have inspected them. I have been to Mr. Freshfield's office a great many times during the last month. I had not those papers in my possession when I went there. I kept some of them at the Mansion-house, and one relating to Slack's matter I kept at home. I gave it up yesterday. I took from Mr. Barber's person his pocket-book, keys, and everything he had, and they were returned to him shortly after. They were kept for several days. The keys enabled me to open drawers at Mr. Barber's. I do not recollect a desk. I ransacked every place in the office that was accessible. I ransacked his cash-box. I have been making every possible inquiry about Mr. Barber, wherever I could. I do not think I went to his residence in Nelson-square. I do not know whether I did or not. I cannot charge my memory, whether I went to the door, but I never went into the place to search it.

**MR. ERLE.**

Q. As to this searching the drawers and cash-box, was the partner, Mr. Bircham, by all the time you did that?

A. Yes, he was there the whole time I searched. There was also another person in the office, but whether he was a clerk or not, I do not know. I think his name was Price. It is usual to search persons apprehended for felony, and take articles from them.

The paper I kept at home was this certificate. The papers I handed to Mr. Freshfield were what either Mr. Barber or Mr. Giddy desired me to hand for their inspection. I know Mr. Giddy inspected the papers I had, which I produced here yesterday. As far as I know, he inspected them. He has applied for no copies to me. I gave up to Mr. Barber and Mr. Giddy those which they had not requested me to hand to Mr. Freshfield. I think it was within a week after Mr. Barber was apprehended. I do not exactly recollect the date.

**MR. WILKINS.** Q. Where did you get that blue check cloak? A. From the house of Mrs. Dorey.

**ELIZA ROSSER re-examined by MR. WILKINS.** This cloak is the same pattern as Mrs. Saunders's cloak, which she took to London with her.

**MR. ERLE.**

Q. Did you see when Mrs. Dorey was down on a visit there whether she had a cloak with her?

A. No, Mrs. Dorey had a cloak made up of the same pattern.

**JOHN FORRESTER.** I was employed to endeavour to apprehend the Saunder's [sic]. I did not find them at Bristol. My brother had been there. I arrived in Edinburgh on the 11th of March, and on the 13th I took Mr. Saunders into custody at Edinburgh; and on the 20th I took Mrs. Saunders also at Edinburgh. Mr. Saunders came to a shop, and was apprehended in the street, not by me. I gave instructions that if he came there he should be taken into custody. I was not present when Mrs. Saunders was taken. I was in Edinburgh at the time. I saw them there. I saw him on the 13th, and her on the 20th, and took them into custody.

**JAMES GUDGE.** I am clerk of the Journals in the House of Commons. The Right Hon. Charles Shaw Lefevre is the Speaker.

**JAMES WILLIAM FRESHFIELD, Esq.** I am the solicitor to the Bank. In consequence of the inquiry about Ann Slack's will, on the 15th of Nov. I called on the prisoner Barber. I told him that I came from the Bank. I made this memorandum at the time.

**MR. WILKINS.**

Q. Do you mean you made it in Mr. Barber's presence?

A. No, immediately after my return home.

**MR. ERLE.**

Q. You said you came from the Bank of England?

A. Yes, in reference to a sum of stock which had been transferred from the name of Miss Ann Slack, under a will which appeared to have been proved by Mr. Barber, and which was irregular. He said that he remembered the transaction. (I am giving it now as written). That Miss Slack came to him with the will, which was quite regular; that the property was mentioned in the will; that she stated that her aunt had died about six weeks before; that he got the will proved, and got her the money; which was all that he knew of the business. I asked him who the lady was. (I meant the Miss Slack, living). He said she resided in some street out of Holborn; that she was a most respectable person, and he had no doubt the transaction was all right.

I asked him if she was introduced, and by whom. He said yes, he had no doubt she was, but he did not recollect by whom; that he would endeavour to recall the fact, but to him it was a mere matter of business, and he knew nothing more of it. I told him that was quite inconsistent with the fact that he had himself been in communication with Captain Foskett some months before the alleged death of Miss Ann Slack, respecting this very property. He said at first that he had certainly had some communication with Captain Foskett, but not, he thought, respecting this property.

He could not recollect. He spoke hesitatingly. I told him that his letters were distinctly respecting a property of Miss Ann Slack. After some hesitation, he said it might be so, that he would not deny it, but that it was a mere matter of business, and he did not feel authorized in disclosing the affairs of his clients. I told him that I did not wish him to tell me more than he chose; that I should not at all press him, but it was necessary I should apprise him that a fraud and forgery had been committed, and that he was gravely implicated in the transaction, by the fact that he had been inquiring and negotiating [sic] respecting this very property, six months before the alleged death of Miss Ann Slack, and before the right of his client<sup>19</sup> accrued; and that I desired to know under what circumstances he had so negotiated. He said he supposed he could tell, and he would endeavour to recollect. That Miss Slack was a most respectable woman, and that he had no doubt it was all right.

I told him that was beside the question, which was, how he came to be interfering six months before he saw her. He said that he did not know that he could tell, or ought to tell, but he would refresh his memory, and he wished me to look at his books, that I might see it was only a matter of business with him. He then produced the probate his ledger, and an account-book, which he opened. There was an entry in the ledger of £90 odd for the proctor's bill, and £15 odd for his

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<sup>19</sup> This must mean 'Emma Slack'.

attendance. He said that was all he got out of the transaction, that his bill, as cast, amounted to £13 odd, and Miss Slack made it £15. The book showed the produce of the stock, £4,500 odd on one side, and was signed "Emma Slack". She had signed his book. I do not remember which of the books that was in. The entry was only signed in one, at recognising or proving the account. I then told him that was not the question, upon which he said he would endeavour to refresh his memory, and if I would call on a future occasion, he would let me know the result. I told him that his character was implicated, that I desired to give him an opportunity to explain if he pleased, but that I did not intend to press him at all. That I should report the case to the Treasury, who would no doubt prosecute the case, and that if he chose to send me an explanation I would report that also, but that I could not delay.

**COURT.**

Q. Have you any doubt that matter to that effect did pass between you? [sic] have you a recollection of it, independent of the paper?

A. I have a distinct recollection of the whole of it without the paper, but I, of course, speak with more particularity from having taken it down at the moment.

**MR. ERLE.**

Q. From that time till after Mr. Barber was apprehended, did he ever communicate to you that Fletcher had introduced Miss Slack?

A. He did not. I had no communication from him whatever, from that moment till he was apprehended.

**Cross-examined by MR. WILKINS.**

Q. Put that paper aside, and repeat to the Jury what you have said?

A. His Lordship will probably allow me to refer to my notes. I have no doubt I could give you a correct account of the transaction without the paper, but there would be variances in words, and it was for that express object I took it down on paper.

**COURT.**

Q. Are you enabled to give an account?

A. I am enabled to give an account of the transaction as it is stated here. I could give the account without this paper, but there would undoubtedly be variances of words, and variances of expressions.

MR. WILKINS. Q. That it exactly what I want.

A. I took this down at the time correctly. I put it down after my return home, about an hour after it happened. I decline to state what took place without the paper, unless you wish me. I swear the conversation took place in the order in which I have read it.

Mr. Barber expressed an angry feeling. It hardly amounted to an angry feeling, but he said, "I hardly understand in what character you put these questions". He spoke in a mild tone of voice.

**COURT.**

Q. You did not mention that, I think?

A. No, I did not. It was then I told him what is here. He said that on the occasion of my pressing him with the fact that he had been negotiating on the subject of this property six months before his client had come to him. It was in reference to that. I put that point strongly.

**MR. WILKINS.**

Q. Pray had you forgotten that when you made that memorandum?

A. I had not. I have stated the substance of what passed.

Q. Was it wilfully omitted, yes or no?

A. It was wilfully omitted. He did not express indignation more than once. I do not think he said he must decline furnishing me with the name of his informant for the present. I will swear he did not. He did not say, "I think at the present time I ought not to mention his name". I swear he said nothing of the kind. I have a sufficient recollection of the whole of the conversation to swear he did not say that.

Q. Why then decline to tell what did take place without your paper?

A. Because having taken down what did pass, for the purpose of accuracy, I decline to run the risk of stating it inaccurately. I read it over at the time once or twice, and subsequently I have not read it over at all, until yesterday, I think. I have probably read it over three or four times altogether. I will not swear I have not read it over six times altogether. I had occasion to explain it to a great number of persons immediately after the occurrence, and I may have read it over six times.

I was not required to attend at the Mansion-house, the business devolved on my brother. I did not think it necessary. I have never given this information on oath before to-day. The notes I have read were the very notes I made (handing them to Mr. Wilkins). This "Mr. James F.'s memoranda" is Mr. Weir's writing, it has been put among the papers relating to this prosecution.

Mr. Barber did not show me his diary. I will swear he did not offer to do so.

Mr. Weir is our clerk.

I did not instruct Forrester to watch Mr. Barber's office, nor give instructions for it. I think I never heard of it. I am not conscious of having heard of the fact. I certainly gave no such instructions, and am not aware that such instructions were given. It was about three weeks after this that Mr. Barber was apprehended. Mr. Barber said if I would call in three or four days he should be happy to give me information. I did not call.

**MR. ERLE.**

Q. What was it he said about the information? [sic] just look to your memoranda as to that.

A. If I would call on a future occasion he would let us know the result. I told him I could not call again. I told him that I meant to go to the Treasury immediately, and report the case.

**COURT.** Q. Are you sure you said you would not call again?

A. Yes. I said, if he chose to send me any explanation, I would report that also, but I could not delay it.

**MR. WILKINS.** Q. Then you did not say that you would not call again?

A. I do not think I made use of those words. Mr. Barber produced two books, and I really do not speak positively in which it was I saw the entry of £90 odd, and £15. I will swear I saw it in some book.

**MR. ERLE.**

Q. Did you take any part in getting up this case?

A. None whatever. I reported the case to the Treasury two days after this interview, and have taken no further part in the case. My brother, and Mr. Weir, my clerk, have been concerned in it.

I had this interview with Mr. Barber at his own office, in Bridge-street. I went to him immediately after having seen Miss Slack at the Bank. This prosecution is by the Treasury. I had no further concern in it on the part of the Bank than to report it to the Treasury.

**MR. SAMUEL ROBERT GOODMAN.** I am the chief clerk at the Mansion House. I was there when the prisoner Barber was first brought up, when the will was produced, and Miss Slack and the proctor, Mr. Wills, were examined. After they had been examined, Mr. Barber applied to be discharged on bail. Mr. Clarkson said that further evidence would be brought forward, and, upon that, the Lord Mayor declined taking bail. Mr. Clarkson asked if Mr. Fletcher was in the room, and no answer was given to him by any person. A short time elapsed, and some communication was made by some person whom I did not know at that time, and whom I should not recognise now; and Mr. Barber then spoke to a party in the room, who afterwards turned out to be Mr. Fletcher.

Q. How soon after?

A. Immediately afterwards. Mr. Barber then made a statement to the Lord Mayor, which I took down in writing, and, after he had made his statement, he then called Mr. Fletcher as his witness.

**Cross-examined by MR. WILKINS.**

Q. Do you remember Mr. Barber examining Mr. Fletcher?

A. I do, and also his cross-examining Miss Slack. I have a copy of that cross-examination. It is some length. It runs four pages in my book.

**MR. ERLE.**

Q. You say he called Mr. Fletcher as his witness, was that after the Lord Mayor had refused to bail him?

A. Certainly. He spoke to Fletcher before he called him. The proceedings were kept waiting, I should say, a quarter of an hour, whilst he was in conversation with Mr. Fletcher in the same room.

(The will was here read, dated 3rd June, 1842; it purported to be the last will and testament of Ann Slack, formerly of Smith-street, Chelsea, spinster, but then of South-terrace, Pimlico, and bequeathed to Emma Slack, her niece, £3,500 Three per cent Consols, standing in her name in the Bank of England, with all other property she might possess, and appointing her sole executrix.)

(The affidavit for probate was dated 16th March, 1843, and was to the effect that the deponent, Emma Slack, of No. 7, Francis-street, Tottenham Court-road, spinster, was the sole executrix,



named in the last will and testament of said Ann Slack, late of South-terrace, Pimlico, Middlesex, spinster, who died on or about the 17th of Feb. 1843, and declaring her effects to be under £5,000)

(The power of attorney granted by Miss Slack to Aderne Hulme, Esq., to receive her dividends, on the Three per Cents., was also read.)

(Adjourned.)

Thursday, 15th April, 1844.

THE QUEEN AGAINST BARBER AND OTHERS CONTINUED.

**WILLIAM CHRISTMAS re-examined.** I never mentioned to anybody but Fletcher about there being any unclaimed dividends in the case of Slack.

**WILLIAM OBADIAH WHEELER re-examined.** I am a clerk in the Bank. Mr. Barber kept an account there up to the time of his apprehension. I think the account began in 1839 or 1840. There was a private account of his, and a joint account of Barber and Bircham.

**DANIEL FORRESTER re-examined.** I went to Bristol to look after Mrs. Saunders. I found the business of a fishmonger carrying on there. The name of Saunders was up at the place. I looked for her. I searched there for the husband as well as her. The business was still carried on by a young man about twenty, who was stated to be the son, and a young lady about sixteen went over the house with me. I took her for the daughter.

**MR. ERLE. Q.** Could you get from them where the mother and father were?

A. They stated they did not know.

(MR. JAMES here applied, on behalf of the prisoner Dorey, to be allowed to withdraw her plea and plead guilty, which was accordingly done.)

John Hutchinson, surgeon, Nelson-square;  
Charles Brady, surgeon, Blackfriars-road;  
William Schoones, solicitor, Tunbridge, Kent;  
Stephen Geary, architect and surveyor;  
Alexander Morton, gentleman, Park-road, Chelsea;  
Edward Evans, surgeon, Borough-road; William Long, solicitor, Bouverie-street;  
William Eeles, surgeon, Union-street, Borough;.  
[ ] Parrell, solicitor, North-street;  
John William Cousins, gentleman;  
John Elston Rogers, publisher of the "Economist" newspaper;  
Francis Squire, engineer;  
Charles Spong, clerk to Elmore and Co., merchants;  
Henry Macnamara, pleader, Inner Temple;  
[ ] Pilcher, surgeon; Cornelius Wittenoon, cashier to Grissel and Peto;  
[ ] Bernard, architect and surveyor; and  
[ ] Martin, undertaker,  
deposed to Barber's good character.

BARBER. GUILTY. Aged 36. )

FLETCHER. GUILTY. Aged 50.	)	Transported for Life.
WILLIAM SAUNDERS. NOT GUILTY.		
LYDIA SAUNDERS. GUILTY. Aged 38.	)	
DOREY . Aged 32.	)	Confined Two years.

Monday, April 22, 1844.  
Before Mr. Baron Gurney.

## Appendix 8 Prosecution Opening Speech in *Stewart*

### Opening Speech of the Attorney-General from *The Times*, in *Stewart*<sup>20</sup>

1. The Attorney-General then rose, and addressing the jury said, he had to entreat their patient attention while he stated to them those facts which were necessary to enable them to understand the evidence that would be laid before them in support of the charge against the prisoners at the bar, which had just been read from the indictment.
2. This was an accusation connected with an offence of a novel description, and it affected persons who had hitherto moved in good society, and who had respectively maintained a creditable name in the world, and for them, and for their interest, and for their protection, as well as for the interests of justice, he (the Attorney-General) entreated the jury to give the most patient attention to the evidence that would be adduced, and to that evidence alone.
3. It would be idle affectation on his part not to know that the subject upon which the jury were about to enter in the discharge of one of the most important constitutional duties that belonged to the subjects of this country - it would be idle affectation to disguise, or to attempt to conceal, or to affect to be ignorant that these matters had been the subject of much publication in the public prints. He (the Attorney-General), however, in common with his learned friends on the other side, must entreat the jury entirely to dismiss from their minds those published statements, which it was scarcely possible to imagine they had not seen before they had entered the box - he entreated them to forget, as far as they could, everything they might have read or learned with regard to the transactions which were to be the subject matter of inquiry today, and to enter upon those solemn duties which they were now called upon to discharge with the firmest determination to let no previous opinion or prejudice affect, in the slightest degree, the verdict they would have to pronounce. He entreated them to attend merely to the evidence, but upon that evidence faithfully and fearlessly to discharge their duty.
4. The technical offence imputed to the parties named in the indictment was, that one of them (since deceased) had forged and published an administration bond, and that the other parties, the three prisoners at the bar, were accessories before the fact, aiding and assisting in the committal of that offence. To speak, however, of the offence in a more popular manner, it was that of procuring, by false and fraudulent means, the transfer of a sum of money from the unclaimed stock, which existed, as the jury might be aware, to a very considerable extent, and which was transferred to the Commissioners for the Reduction of the National Debt in cases of the parties to whom the stock belonged dying, and leaving no one to claim it after a certain period of time.
5. He (the Attorney-General) would now narrate a few facts, and he should endeavour to do so with all the simplicity and clearness he could command. He desired, in the first instance, merely to state those facts which would undoubtedly be proved in evidence, and to abstain, as far as he ought, from any comment upon them, except that which was necessary in order to point attention to those parts bearing upon the entire case as it affected respectively the individuals charged.

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<sup>20</sup> *The Times* (1844) 'The Will Forgeries' 12 April.

6. He could not forbear (having heard the application made by his learned friend, Mr. Wilkins) here stating, that in his (the Attorney-General's) judgment, it was essential, from the nature of the case, that the prisoners should be tried together. The jury would find that they had been working together (whether honestly or otherwise it would be for the jury to determine), and it would be impossible to judge of that from the conduct of one of them apart from the conduct of the others, affecting the purpose and end all had in view, and he must say he believed his learned friend, Mr. Wilkins, would give him credit for sincerity when he stated that if he (the Attorney-General) had thought that the end of justice would be better answered by a separate trial of each of the prisoners, he most undoubtedly should have felt it to be his serious and solemn duty, not merely to comply with the wishes of his learned friend, but should himself have been ready to originate that mode of making the inquiry, with a view to the most satisfactory determination of this extremely important case; but he honestly entertained the opinion he had stated. He believed it to be essential that the entire case should be heard together, and he did not think it would embarrass the defence of any of the parties now at the bar that the jury should hear and try the question in one entire case.
7. He (the Attorney-General) had already intimated that by an act [sic] introduced some 20, 30, or 40 years ago, it was provided that if stock remained unclaimed it was at the end of 10 years transferred to the Commissioners for the Reduction of the National Debt, but care was taken that when so transferred it should still be open to anyone lawfully entitled to the stock to make a claim to it, if the party claiming had the means of presenting it in the proper quarter, and on verifying it to get back the stock, so that no injury was done to any individual by the transfer to the public creditor.
8. The prisoner Barber was an attorney, who had been in practice in Bridge-street, Blackfriars, for some years before this charge was made against him. The prisoner Fletcher was a person who had never been suspected until these inquiries were made before the present Lord Mayor, who, whatever might be the result of the case - whether the jury should think the prisoners to be innocent or guilty - had discharged the duties of his office with great zeal, ability, and fidelity. The other prisoner was the wife of a respectable tradesman in Oxford-street, [sic]
9. He would now state the circumstances of the case, as they would be proved in evidence. Some of those circumstances would admit of no doubt whatever; others would be open to challenge as to whether true or not; but where any doubt existed it would be for the jury carefully to consider them, and in the result to say how far they implicated any of the prisoners.
10. In the year 1826 there was standing in the Bank of England in the name of John Stewart, of Great Marlow, Bucks., gardener, the sum of £51 per annum, Long Annuities; that was to say, he was entitled to receive £51 annually so long as those annuities should exist. It would appear that Stewart received the last dividends on this stock on the 5th of April preceding his death. At that time the amount was only £41 per annum; on the 1st of June he purchased £10 a year more of this description of stock, but he did not receive the dividend payable in the autumn of that year, 1826, and he died on the 13th of March, 1827.

11. The stock remained without any claim on it from the 5th of April, 1826, down to the 11th of October, 1836; and then, in pursuance of the act of Parliament, it was transferred to the Commissioners for the Reduction of the National Debt.
12. The deceased John Stewart had been a gardener, a sort of head man of a gentleman of the name of Strode, living at Court-garden, and had appeared to all who knew him to be a Scotchman, and he (the Attorney-General) would presently have occasion to mention that they had been found among his papers after his death documents from which it appeared that he was born in Scotland; that he lived in Scotland until he grew up; that when he was about 20 years of age he came south, and his history throughout would be traced up to the time of his coming into the service of the family in whose employment he died. It would also appear from declarations he had repeatedly made, that he had no other relative than a brother, that he had no sister, that he had never heard of his brother for many years before he died; and among all those who had known him intimately and to whom he had talked of his relative, no one had ever heard of a sister being in any way connected with him, nor was there any trace of any such person ever having been in existence.
13. Stewart died in 1827, and the stock having been transferred in 1836 to the Commissioners for the Reduction of the National Debt, in the month of May, 1840, some inquiries were made at Great Marlow both by the prisoner Fletcher and afterwards by the prisoner Barber. It would appear that Fletcher went down to Great Marlow, and stayed a short time at the Greyhound Inn there, kept by a person of the name of Hyatt, who would be called, and who introduced Fletcher to several old persons resident in Marlow, and who knew Stewart. Some of them would identify Fletcher and Barber, and some only remembered that such a person had been with them inquiring about Stewart.
14. The inquiries were made under the name of Mr. G. Jones, of 24, Little Guildford-street, Russell square, and there would be no doubt as to the identity of Fletcher as the person who, in this false name and under this false address, made inquiries of a number of old persons as to John Stewart. Several persons would identify him, but he would be still better identified by a letter which would be proved to be in his handwriting, addressed on the 25th of June, 1840, to William Windsor, one of the old persons whom he saw at Great Marlow, and who would today produce that letter. He (the Attorney-General) would now read a portion of it, and then the jury would be able to judge of the nature of the inquiries he had been making:

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“24, Little Guildford-street, Russell-square,

London, June 25, 1840

“Sir, - when I was at Great Marlow, about a month since, inquiring after the relations of the late Mr. John Stewart, who was gardener to Mr. Strode, of Court-garden, you had the kindness to promise me that if I wanted any further information respecting Mr. Stewart you would obtain it for me. From that circumstance I now take the liberty to write to you on the subject, with the understanding, as I before promised, that you should be paid for all or any trouble that you might take in the matter. I should therefore be much obliged if you could make out the name of the gentleman that Mr. Stewart lived with before he came

to live with Mr. Strode, and the place where, and also, if possible, what part of Scotland Mr. Stewart came from.

15. He (the Attorney-General) read this letter because it showed that the writer, the prisoner Fletcher, was aware that Stewart was a Scotchman. The letter proceeded: -

“This I was told (if I recollect rightly) might be obtained from a fellow-servant of his, who is a Scotchman, and now living at Marlow. Any other information you may have obtained respecting him since I was there I shall be glad to learn. I have been able to learn that Mr. Stewart had a sister living about 12 years since in America. If you will take an early opportunity of making the above mentioned inquiries, and will let me know in the course of a few days, you will oblige,

“Sir, your obedient servant,” “G. JONES.

“N.B. Be so good as to address your letter to me thus: - ‘Mr. Jones at Miss Hawkes’s, 24 Little Guildford-street, Russell-square, London.’

16. Miss Hawkes would be called as a witness today, and would prove that she knew nothing whatever Jones or Fletcher, but that she had been induced at the request of Mrs. Dorey at some other place.
17. Shortly after Fletcher had been down to Great Marlow the prisoner Barber went down there, and the name he gave when there was Clarence Peckham, Esq. He believed there would be no doubt that the prisoner Barber was the person who went under that name while at Great Marlow. However, he gave as his place of abode, No. 52, Nelson-square, which was Barber’s real place of abode. He had a clerk of the name of Robert Peckham, but there could be no doubt the prisoner Barber was the individual who assumed the name of Peckham at Marlow, for one of the witnesses who came up to London saw him at 52, Nelson-square, and would be the better able to identify him.
18. The object of the inquiries made by both Fletcher and Barber had been apparently to find out what connexions John Stewart, who died possessed of the stock, had - what had been his history - where he had lived - where he came from, and by and bye [sic] the jury would have to consider whether those inquiries had been honestly made with a view of advancing a genuine claim, or even a false claim which they believed to be good, or whether those inquiries had been made for the purpose of bringing forward a false claim, and in order to give the appearance and consistency of truth.
19. The jury would find it would be stated by one witness, perhaps more, that whilst Barber was at Great Marlow, under the name of Peckham, he spoke of the visit previously made there by Fletcher, under the name of Jones, and that he talked of him as being one of the same firm. This, if true, would leave no doubt that Barber had been perfectly aware that Fletcher had been making these inquiries in a false name; and it would be clear that Barber had continued those inquiries himself under a false name. It might be said that there was a desire to conceal these inquiries altogether - that the inquiries were perfectly honest and legal - that, though made under feigned names, there was no illegal design; but it would be for the jury to consider all these points when the whole case had been laid before them.

20. The jury would learn from all the witnesses from whom the inquiries had been made, that both Fletcher and Barber had been distinctly told that the deceased John Stewart had no other relation but a brother, of whom he had not heard for many years before his death; and yet, after that, Fletcher wrote the letter of the 25th of June, stating that he had learned that Stewart had a sister living in America 12 years ago.
21. The next set of circumstances which he (the Attorney-General) must introduce to the attention of the jury would be the conduct of the prisoners and of Mrs. Richards, deceased, the mother of Mrs. Dorey. At this period, namely, in June 1840, the prisoner Georgina Dory [sic] had not married her present husband, but was then Georgina Richards, living with her mother in Rathbone-place, at the house of a person of the name of Wybrow.
22. It would be shown that Mrs. Richards, the mother, was very old, infirm, had weak eyes, and an appearance which made her not difficult of being recognised by those who had seen her once. In the month of July, after Fletcher had written the letter he had read, the mother removed from Rathbone-place to Camberwell, and occupied a portion of a house, No. 1, Southampton-terrace. She stayed there about three months, and went by the name of Miss Stewart. She was visited frequently, almost every day, by the prisoner Fletcher, whose own house was a little beyond the place where she lodged, and who himself, before Mrs. Richards went to Camberwell, had called at the house and said he wanted lodgings for a friend of his, an old lady; he approved of the lodgings and brought there the old lady, who stayed there under the circumstances he had mentioned as Miss Stewart.
23. Now, that old lady had signed the administration bond in question, as the sister of John Stewart, the proprietor of the stock. She thereupon obtained letters of administration, and the result was that the accumulated dividends were paid, and the stock transferred to the name of Elizabeth Stewart. Whether that old lady herself had transferred the stock would be a matter of considerable doubt. It would be shown that, while the old lady was lodging at Camberwell, she was visited frequently - every day - by Fletcher; she was visited once or twice a week by Fletcher's wife and daughter, and frequently by her own daughter, then Georgina Richards, now Georgina Dorey, the prisoner, who then passed as her niece.
24. On the part of the prosecution it was alleged that the person who resided at the lodgings taken by Fletcher for an old lady, whose name he did not mention, but who during her stay there answered to and received letters addressed to Miss Stewart, was Mrs. Richards, the mother of Georgina Dorey, and that Barber and Fletcher well knew the fraudulent scheme (by whom concocted it would be for the jury to say) for getting possession of the stock.
25. Now, shortly after Elizabeth Stewart, or rather Mrs. Richards under the name of Elizabeth Stewart, had taken possession of the lodgings at Camberwell, the prisoner Fletcher went with her to the office of a proctor in Doctors'-commons of the name of Pott, and then she made the ordinary affidavit to obtain letters of administration. That affidavit was made on the 31st of July, 1840, and as it was merely in the common form, he (the Attorney-General) would not occupy any time by further adverting to it.
26. There was a rule at Doctors'-commons, that when a party has been dead a long time, the individual who came forward to claim to be entitled to administration should be required to

give reason why it was that the claim had been so long delayed, and accordingly it had become necessary that in this case the delay should be accounted for, and with a view to do this another affidavit had been made by Elizabeth Stewart. It was as follows: -

“In the Prerogative Court of Canterbury: -

“In the goods of John Stewart deceased, appeared personally Elizabeth Stewart, of No. 1, Southampton-terrace, Southampton-street, Camberwell, in the county of Surrey, spinster, and Thomas Griffin, of No. 34 duke street, Grosvenor Square, in the county of Middlesex, tailor, and severally made oaths as follows: - And first, this deponent, Elizabeth Stewart, for herself made oath, that she is the natural and lawful sister and only next of kin of John Stewart, late of Great Marlow, in the county of Buckingham, gardener, deceased, who died on the 18th day of March 1827, a bachelor and intestate without a parent; and in verification of her said relationship to the said deceased this deponent refers to the annexed certificate of baptism. That in the month of June, 1825, this deponent came to England and met her brother, the deceased, at the Bank of England, when he informed her that he had been purchasing some stock, but did not state to this deponent the amount, or in what stock he had invested his money, he being a man of very peculiar and reserved habits. That the deceased was at the time of his death in the service of James Cranborne Strode, Esq., then residing at Court-garden, Great Marlow, in the capacity of steward and gardener; and the said deceased was interred by direction of the said master, who defrayed the expenses attendant thereon out of monies remaining in his hands belonging to the said deceased, as this deponent has been informed and believes; and this deponent having been informed that the said deceased had a chest in which he kept all his papers of moment and concern, which was in the custody of the Rev. Tracy Coxwell, the vicar of Great Marlow, has, through her solicitor, make application to him for information relative thereto, in answer to which application her said solicitor received a letter from the said clergyman, stating that he never heard of any will being left by the deceased, or had any papers or other property belonging to the said deceased in his possession. And this deponent further made oath that at her last interview with her brother, he expressed an intention of disposing of his property in England and going to America to purchase a farm and reside there with this deponent: consequently she was constantly in expectation, after her return to New York, of her brother's arrival; and this deponent addressed several letters to him at different periods to England, but without receiving any reply, and it was not until her return to this country, in the month of May last, in consequence of not having heard from her brother for so long a period, that she became acquainted with his death through a friend of her late aunt (Mrs. Elizabeth Stewart), named Jones, who came over from New York to Bristol with this deponent, and, having business in London, offered to go to Great Marlow, and convey a letter from this deponent to the deceased, and, on his return, the said Mr. Jones informed this deponent that her said brother died in the month of March, 1827, which, from subsequent inquiries, she finds was the fact. And this deponent lastly made oath that her said late aunt (with whom this deponent resided in New York) frequently told her that the said deceased had about £700 in the Bank of England, and also other money which he had lent on mortgage, which this deponent believes to be true. And this deponent, Thomas



Griffin, for himself made oath, that he knows, and has been well acquainted with, Elizabeth Stewart, his fellow deponent, and also with John Stewart (the beforenamed deceased) for 25 years and upwards, and while he (the deceased) was residing at Great Marlow aforesaid; and this deponent knew and understood the said persons to be brother and sister, and has always so heard them speak of and acknowledge each other. And this deponent further made oath, that in or about the month of June, 1826, the deceased, in the course of conversation with his said sister and this deponent, stated that he had been placing some money in the Bank of England, which he, however, intended shortly to take out again for the purpose of proceeding to America to join his said sister, and then expressed an intention of purchasing a farm, and residing permanently in that country.”

27. That affidavit was handed to the registrar, and he thought it by no means a sufficiently ample account to justify the issue of the letters of administration.
28. In the meantime, however, the duty of £45 had been paid by Fletcher, and, it being necessary to have two sureties to the bond, Fletcher gave the name of Thomas Griffin, of 34, Duke-street, Grosvenor-square, tailor, as one of those sureties. The other surety was procured by Mr. Pott, or his clerk. They thought that this was not a complicated case, and as there was only a sister to account for, they, or one of them, procured the other surety, John Gregory, a relative, he believed, of the clerk of Mr. Pott, and they went before Dr. Robertson, and the bond was executed by Griffin and Gregory.
29. On the execution of the bond, nothing remained to be done but to satisfy the registrar that the delay was properly accounted for, and that the sister and brother were really connexions. Accordingly there was handed in, connected with the affidavit which was finally made to satisfy the registrar, a certificate of the baptism of John Stewart and a certificate of the baptism of Elizabeth Stewart. The first described John Stewart as the son of Robert and Jane Stewart, born in the parish of Marylebone, in the county of Middlesex, in 1761. The certificate of Elizabeth also described her as born in the parish of Marylebone, of Robert and Jane Stewart.
30. Now, there could be no doubt that the John Stewart mentioned in the one certificate and the Elizabeth Stewart mentioned in the other were the son and daughter of Robert and Jane Stewart, and born in the county of Middlesex; but the jury would have reason to believe that the John Stewart whose property the stock in question was came from Scotland, and that Fletcher, at all events, was perfectly aware, as shown by his letter of the 25th of June, that he was a Scotchman.
31. But this was not all, for besides these certificates, there was a statement purporting to explain the connexion between the parties, which was in Fletcher’s handwriting and had been found in Barber’s possession<sup>21</sup>. As Mr. Barber was acting avowedly as the attorney to the parties, it was undoubtedly quite consistent with his acting merely in that capacity that any paper or document relating to the business should be found in his possession; but the jury would have to consider what his conduct was, and what guilty knowledge he had of the transaction.

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<sup>21</sup> This is the document mentioned in OB1 which begins as follows: ‘MR. GRATTON. This paper is something like the prisoner Fletcher’s writing—I believe it to be his—(*read.*) “Mrs. Stewart states, that in or about the month of June, 1826, she received a letter from her brother ...’

32. But though these documents in the handwriting of Fletcher were found in the possession of Barber, it should be stated, in justice to Barber, that he professed to be acting as the attorney of Elizabeth Stewart. The letter that Fletcher sent on the 25th of June, 1840, in which he professed to be Mr. Jones, had been read; and it would be proved that Barber knew Fletcher was acting under that name. That Fletcher had made inquiries under that name there could be no doubt, for that was his handwriting to prove it; but with respect to Barber the case had not the same certainty. The jury, however, would consider whether there was any doubt that Jones was at Marlow making inquiries, and also whether Barber knew that Fletcher had been there under the name of Jones; because those facts were most important.
33. A document in the handwriting of one of the prisoners was found in the possession of another; and it professed to be a statement of Mrs. Stewart, to the effect “that she was informed of her brother’s death through the kindness of an intimate friend of her late aunt, who resided in New York, in America, who came over to Bristol in May last with her, of the name of Jones. In consequence of his having business in London, he promised to go down to Great Marlow and see her brother, and take a letter to him from her, which he did. On his return he informed her that her brother had been dead ever since March, 1827.”<sup>22</sup>
34. Now, if the jury should be convinced that the Mrs. Stewart of whom that narrative professed to speak was Mrs. Richards, who disappeared for a few months from Rathbone-place, and appeared at Southampton-terrace in lodgings which Fletcher had provided for her, it would be for them to say how it happened that what she stated to these two prisoners - to Fletcher, the one who took it down, and to Barber who received and kept it, and professed to act upon it, came to be stated at all; it would be for them to say whether there was any other person in existence bearing or using the name of Jones in this transaction except Fletcher himself, who did go down to Marlow in May and make inquiries, and came back again, and who then, when he had communicated with Miss [sic] Richards, stated in his letter back to the people at Marlow that he had been able to ascertain that Mr. Stewart had a sister living about 12 years since in America.
35. That letter was written in the month of June; and if that statement were true, Fletcher had at that moment the means of communicating with the sister of John Stewart. If she was the person she represented herself to be, she could have told at once whether her brother was born at such a place, or whether they were both born in the parish of Marylebone, in the county of Middlesex, or whether John Stewart came from Scotland, or from what place he did come. For, let it be observed, Fletcher did not suggest that he had been in America more than 12 years, and according to the ages of the persons represented to be her sisters he must then have been above 50 years of age.<sup>23</sup> No other person under the canopy of heaven, bearing or using the name of Jones, was engaged in this affair except Fletcher, whom Barber knew to have been at Marlow under that name, and who himself had been there sometime afterwards speaking of Mr. Jones. The statement of “Mrs. Stewart” ran thus: -

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<sup>22</sup> Erle referring here to the letter sent by Barber to Mr Pott. The statement in Fletcher’s handwriting is identified in footnote 1 above.

<sup>23</sup> This sentence does not make sense. It is not replicated in the report in the *Morning Post* (1844) ‘The Will Forgeries’ 12 April.

“Mr. Jones called upon her about a month since, and informed her that he was then going back to America, and she had not heard of him since. She had been further informed that Mr. Jones was now a captain of a ship, and a person of independent property; and that her aunt, Mrs. Stewart, living in New York, had frequently said her deceased brother had about £700 in the Bank of England, besides money out at mortgage.”

36. Those documents were handed by Barber to Mr. Pott, in the presence of his clerk, and the object was to have an affidavit so framed as to satisfy the registrar; that being done the documents were handed back to Barber, and found in his possession when his premises were searched.
37. Thomas Griffin, in an affidavit, declared that he was well acquainted with Elizabeth Stewart and the deceased, who were sister and brother; and that the deceased, in conversation with his sister and Griffin himself, told them that he had been placing money in the Bank of England, but that he intended to take it out, and go to America, and purchase a farm, with a view of settling in that country. But as far as Griffin was concerned, there was not one syllable of truth in his statement, and he (the Attorney-General) still had his doubts about the propriety of calling that person as a witness. Comments severe and just would perhaps be made upon the evidence of that individual, whose share in the transaction manifestly laid him open to imadversion and even suspicion; but the jury would exercise their discretion, and give him that degree of credence which belonged to a person called before them under such circumstances.
38. On the 26th of August another affidavit was made for the purpose of satisfying the registrar, and there was a delay in the proceedings of which Mrs. Richards more than once complained.
39. The stock was transferred on the 20th of October; but before that a correspondence had taken place between Mr. Strode, the master of the deceased John Stewart, and the prisoner Barber. The letters were still in existence, and of their authenticity there could be no doubt, as would be proved upon their production. Whatever conclusion, therefore, the jury could safely draw from that correspondence, whether for or against the prisoner Barber, they would be bound to draw. On the 7th of September, which was before anything had been done in the way of getting possession of the money, the prisoner Barber wrote to Mr. Strode, saying that he was instructed by Mrs. Stewart, the administratrix of her deceased brother, John Stewart, to demand from him the receipts for the stock in which her brother had invested his money.
40. Mr. WILKINS. – Is Barber’s name signed to that letter?
41. The ATTORNEY-GENERAL. – Yes. The object of that letter might be merely to get possession of his client’s papers, and there could be no doubt that the possession of the original stock receipts would have gone a very long way in clearing up any doubt with regard to those who went to represent that they were the next of kin of John Stewart; and if they went there with these very papers in their hands, it would clearly prove such a connexion between them and John Stewart as must at once tend to silence all doubt and suspicion.

42. Stewart, however, having been dead for some years, Mr. Stode was not disposed at once to yield to this application, and he accordingly wrote an answer, which was found amongst Barber's papers, referring Barber to his solicitors, Messrs. Pickering and Co., for any information or explanation he might require.
43. Upon that Barber went to the office of Messrs. Pickering, where he saw Mr. Pheasant – [sic, Besant, later references corrected], their clerk, through whom he was informed that they were not at all disposed to treat this Elizabeth Stewart as the sister of the gardener, John Stewart, because Mr. Stode, his master, well knew the man's history. it was as early as the 1st of October, and before any money was transferred, that Barber saw the clerk at Messrs. Pickering's office, and was told that the affidavit that he had sent was not satisfactory; and it was worthy of notice, though it might seem a minute circumstance, that in order to forward the matter at the Prerogative-office, the certificates of birth in the parish of Marylebone were handed in along with the affidavit.
44. But when Messrs. Pickering, Mr. Stode's attorneys, were to be satisfied, the affidavit was given in without those certificates, for if they had met the eye of Messrs. Pickering, or of their clerks, or of anybody else acquainted with the circumstances, they would have at once said, "Mrs. Stewart is an impostor, for John Stewart was not born in the parish of Marylebone, in the county of Middlesex." There was, therefore, a motive for keeping back those certificates, and they were kept back.
45. Barber expressed his surprise that Messrs. Pickering were not satisfied with that which would satisfy the Prerogative Court; upon which Mr. [Besant] told him that if his client, Mrs. Stewart, really was the sister of John Stewart, she would surely be able to recollect some circumstances respecting her late brother indicative of her relationship, and that if the clerk were to see her he could by conversation with her satisfy himself whether she was or was not the sister of John Stewart. That was an experiment which Barber declined to make; he did not choose to produce Mrs. Stewart, who had slipped back to her name of Richards at that time; but he said something to the effect, that if Mr. [Besant] would put down some questions to be asked he would endeavour to get them answered by Mrs. Stewart. Accordingly Mr. [Besant] did put down the following questions upon paper to be answered by the supposed Mrs. Stewart: - "The place from which John Stewart came? Where did he go to school? Where did he reside till the age of 21? When did he leave home? Which of his parents was living at the time? What relations he had?"
46. Barber took away those questions, but what he did with them was not known, for he never answered them; and nothing more was heard from him until the November following, at which time all the stock had been transferred, that being done on the 20<sup>th</sup> of October, and on the 22d the accumulated dividends for above 10 years were received by a woman who was accompanied by Barber, but who it would seem was not the person who had signed the warrant.
47. She had taken but very little part in the transaction; at the proctor's office she never opened her lips, but stood by a passive listener to what was stated on her behalf by other parties. But there was every reason to believe that she was not the person by whose hands the dividends were received. It was the practice that persons claiming arrears of dividends should

be identified; the woman who accompanied Barber was identified by him as Elizabeth Stewart, and Mr. Hill identified Barber. She was not a person of that appearance which the advanced age of Mrs. Richards would justify.

48. The money for the dividends, £630, was paid in notes and gold, and the notes were subsequently exchanged for gold at the Bank, having written upon them, "Elizabeth Stewart, 8, Southampton-terrace, Camberwell," in Fletcher's handwriting.
49. Barber received £30, a sum not more than was fair for his professional trouble, coupled with any gratuity which might be presented upon such an occasion. The money for the stock was paid to the parties with a check [sic] by the broker, which check was instantly turned into gold, to the surprise of the broker, who had, by mistake, overpaid £3 3s 9d, and went to Barber about it. Barber admitted the overpayment, and explained the sudden conversion of the check into nothing but gold by saying that the parties were very silly, being alarmed by some rumours of a war. The jury would have to consider whether that was the ordinary way in which parties acted, and whether this proceeding did not indicate a desire to obliterate, as far as the parties possibly could, all trace of the transaction.
50. Barber subsequently made another application to Mr. Strode, which was met as before, that gentleman saying that he did not consider the person to be the sister of his gardener. Papers were found in the possession of the deceased gardener, John Stewart, which papers were certified by the minister and the two elders of the congregation in Scotland to which John Stewart had belonged.
51. Mr. WILKINS objected to the learned Attorney-General describing these papers until they were produced, and urged that they were not evidence.
52. The ATTORNEY-GENERAL was proceeding in his answer to the objection, but Mr. BARON GURNEY suggested that the point might be deferred for the present.
53. The ATTORNEY-GENERAL resumed, and said, that John Stewart had left behind him certain declarations with respect to himself which would by and by be tendered. There could be no doubt that a will professing whence the deceased came would, in itself, be evidence, or that the next of kin could claim under it; but, dismissing that point for the present, there was a matter to which he might now allude with very great propriety.
54. Application was made to a Scotch clergyman for the purpose of obtaining the certificate of a marriage between Robert Stewart and Jane Stewart. At that time Mr. Duncan M'Pherson was session-clerk at Callendar [sic], in the county of Perth, and he would tell the jury that he had received an application for the purpose of sending to London the certificate of marriage between Robert and Jane Stewart. Mr. M'Pherson's answer was found in the possession of Mr. Barber. The letter under the name of Elizabeth Stewart, which evoked the answer, was written by Fletcher. The letter, then, was written by one of the prisoners, and the answer found in the possession of the other. The answer was dated the 7th of October, 1840, some days before the stock was transferred; it was addressed to Mrs. Elizabeth Stewart, and ran as follows:-

“Madam, - I yesterday received your letter, with the enclosure, and now give the prefixed certificate of the marriage of Robert Stewart and Janet (not Jane) Stewart. Were it in any way consistent with the duties of my office, I would have complied with your desire; but, were the records to be overhauled, and I found guilty of having given a false extract, according to the laws of this country, I might be severely punished, if not denuded of my office. If they are the right parties, as you believe they are, I trust it may be in your power to produce corroborative evidence, notwithstanding the slight discrepancy of the female’s name.”

55. Without anticipating what Mr. M’Pherson might say of the letter and his answer to it, it was enough to remark, that the one being written by Fletcher, and the other found in the possession of Barber, they were evidence against both the prisoners; and it was for the jury to say whether that answer did not in distinct terms disclose that there had been an attempt to tamper with that respectable officer, Mr. M’Pherson, as to the certificate he was to give of the marriage of certain parties.
56. It would be remembered, that in the certificate of birth, John Stewart was stated to have been born in 1761, and he and Elizabeth Stewart, born afterwards, were both described as the children of Robert and Jane Stewart. For whatever purpose the certificate of marriage was wanted, whether or not it was thought desirable to show that the father and mother of those children were married, or to get a marriage in Scotland, - it would be for the jury to say whether that answer was not a distinct notice to Barber, for the letter was found in his hands; there it was amongst his papers in this case.
57. It was for the jury to say whether there was not a tampering with Mr. M’Pherson, as clerk of the Kirk Session, to send up a certificate of a marriage of Robert and Jane Stewart, instead of Robert and Janet Stewart, which latter he did send up. That answer was written on the 7th of October, 13 days before anybody touched the money, which was the object of this entire plan; and that answer must have disclosed to Barber that there had been this sort of conduct on the part of somebody in this transaction; and it would be for the jury to say what was the duty of Barber under such circumstances.
58. The prisoner Georgina Dorey had made a statement, in which she acknowledged her share in this transaction, and that would be put in as evidence only so far as it affected herself in reference to this case.
59. He considered it fair to make, at this stage of the case, all the comments which it might be advisable for him to make upon the facts to be proved in evidence. He assured his learned friends that in pursuing this course he did so with the view that they might have no reason to complain afterwards that he had stated the facts nakedly and without any comment, reserving for a future occasion such comments as those facts were calculated to elicit.
60. Some circumstances and facts, besides those to which he had alluded, would be proved in evidence, corroborative of the general history of the case. There would be called before the jury the companions and friends of Stewart at various periods of his life. They would have witnesses, also, who would be able to state whether a person of the name of Stewart had ever come from America, and those witnesses must know when, if ever, she came, how she came, and when and how she had disappeared. The jury would have to inquire who Mr.

Jones was, and what became of him; and whether the prisoner Barber was acquainted with any other Mr. Jones than the prisoner Fletcher, who, it would be proved, had assumed that name.

61. This case was one which required a grave, serious, and full answer on the part of the prisoners. All that talent could do for them would, he was convinced, be done by the learned gentlemen retained on their behalf; and he implored the jury to regard this case with a watchful anxiety, and not hastily to draw conclusions. It was their duty to ascertain first, whether the facts were proved, and then to draw such conclusions from those facts as became men of intelligence and of business. He entreated the jury to limit their attention to the facts which would be proved in this case. If those facts were consistent with the innocence of all or any of the prisoners, they would be entitled to the benefit of any reasonable doubts the jury might entertain. It was for the jury to determine whether all or any of the prisoners were implicated in these fraudulent transactions.
62. He might be allowed to say that he had no interest - that the Crown, which he represented, had no interest in this case, except so far as the just, the impartial, and the fair administration of justice was concerned. If, however, the jury considered that none of the prisoners charged with this crime could be ignorant of the objects and purposes of these transactions, it would then be their painful duty to pronounce a verdict in accordance with such conviction; and he was convinced that, either in the one case or the other, they would discharge the important duties confided to them with a view to the honest, faithful, and, as far as it could be so, to the satisfactory administration of justice.

[ends]

## Appendix 9 Defence speech in *Stewart, Wilkins*

### Speech of Serjeant Wilkins in *Stewart*, from his 1844 book<sup>24</sup>

THE CASE

of

WILLIAM HENRY BARBER,

INDICTED TOGETHER WITH

JOSHUA FLETCHER AND GEORGIANA DOREY,

FOR BEING ACCESSORIES TO

THE FORGERY OF A BOND OF ADMINISTRATION OF JOHN STEWART, DECEASED

1. The case for the prosecution having been concluded, Mr. WILKINS addressed the Jury as follows –
2. MAY IT PLEASE YOUR LORDSHIPS, AND GENTLEMEN OF THE JURY, - I have the honour to appear before you as of counsel for Mr. Barber. Be assured these are not words of course. No! Despite the perversions, exaggerations, and misrepresentations of calumny - despite the capricious tyranny of that terrible despot, the press, and the fearful results of its despotism - the pusillanimity and desertion of hollow friends, the destitution and loneliness of my unfortunate client - after careful perusal of every libel published against a broken man, as Mr. Barber now is, whatever may be the result of this trial - after the most anxious criticism of every tittle of evidence that has been urged against him, I thank God that I have courage enough to deem it an high honour to be the advocate of Wm. Henry Barber.
3. Gentlemen, my pride is painfully alloyed by the humiliating consciousness that my powers of advocacy are very inadequate to the duties imposed upon me. Never, since I have been in the profession, have I entered upon a defence with so much trembling, anxiety, and fear, and with so little self-possession, as on the present occasion. I tremble not on account of any demerits in my case, not because the prosecution, in its evidence, presents formidable difficulties, but because of the prejudice by which slander and the public press have surrounded that evidence.
4. Gentlemen, so active has that prejudice become in its persecuting spirit, that, regardless of the dignity and sacred character of this Court, more than once during this trial has it manifested itself in exultation, when answers were elicited, on the part of the prosecution, that seemed for a moment condemnatory of my client – [Mr. BARON GURNEY – Surely, Mr. Wilkins, you are mistaken. I am sure nothing of the kind was observed in Court. I really have not listened to any.]

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<sup>24</sup> Charles Wilkins and H. Gregory (1844) *The Queen v. Barber, Fletcher, and others. The Speeches of Mr. Wilkins, in Defence of William Henry Barber*. London: John Crockford & Son.



5. Gentlemen, I regret to have called for this interruption on the part of his Lordship. I am quite sure that the manifestation of feeling, upon which I was animadverting, must have escaped his Lordship's notice, or it would at the moment have been followed by that reproof it so justly merited. My friends who are with me in the defence heard it, and commented upon it at the time, and I am sure it will be no ground for marvel that we should be acutely alive to any circumstance calculated to increase the difficulties of our necessarily arduous task. [4]
6. Gentlemen, when that feeling developed itself – when the sufferings of my client provoked exultation in others – when *his* ruin seemed to be the foundation of others' happiness - then I was reminded of the frightful efforts out of doors to prejudge and convict, and then did I tremble lest the infection should have extended even to that sacred place the jury-box, that place to which helplessness has been hitherto pointed, by the finger of the law, for protection against oppression - the refuge of the weak from the powers and encroachments of the strong.
7. And let me not be thought, gentlemen, in the expression of such fears, to disparage your understandings or integrity, for I do know that in criminal inquiries, paradoxical as it may appear, our best feelings sometimes rise up in warfare with our judgment, and indignation at crime has often – too often - provoked injustice to the accused.
8. But when I look on the other side of the table, at the array of mental power enlisted on the part of the prosecution, to justify the charges contained in the indictment, the first forensic talent in the land, combining to accuse, and torturing its ingenuity to give to every incident the colour of guilt - knowing the vast resources that they have, who conduct this prosecution, in the state purse, the arms of a powerful government, the obsequiousness, servility, and alacrity always attendant upon power - I say, when I survey all these circumstances, and then turn to the helplessness and desolation of my client, his mind bowed down by the very weight of the accusation under which he stands, every man standing aloof from him, none to say God bless him, do you wonder, gentlemen, that I enter upon such a task with something like dismay?
9. Are not my necessary difficulties great enough, but must the learned Attorney-General wantonly increase them? Why was I refused a separate trial? I asked for one upon affidavit, stating that the ends of justice would in all probability be defeated if my request were not complied with. The Court referred me to the learned Attorney-General. I waited with anxiety for his answer, I knew his generous nature. There is not in this kingdom one who entertains for him more respect than myself, and he has long been looked up to, by the junior members of the profession, almost, I may say, as a father. On many occasions, when doubt has crossed my path, I have availed myself of his amiable and accessible nature to ask for his instruction, the excellence of his advice, and the generous manner in which he has always given it, will compel me to think of him with gratitude whilst Memory holds her seat.
10. But, in proportion to the exalted opinion that I have formed of his generosity, was the bitterness of my disappointment, in his refusal to accede to my reasonable request. Had he assigned any reason for his refusal, I would not have complained, that which he did urge as justificatory of his conduct, to my poor judgment, leads to an opposite conclusion. "It is

essential for the ends of justice,” said he, “that the prisoners should be all tried together.” That was said emphatically, in a manner solemnly impressive, in a manner peculiar to the learned Attorney-General, but emphasis is a poor substitute for argument, and solemnity but ill supplies the place of reason.

11. The Attorney-General proceeded to say, “They were all working together, and, whether honestly or otherwise, it will be for you to determine. Did it appear that they worked together for a common purpose, that is what you have to determine.” Now, gentlemen, this is the Attorney-General’s answer to my request. What were the reasons assigned in our affidavit for a separate trial? Why, in effect these – “Ever since my apprehension I have been incarcerated, my papers and documents have been seized, and are all in the possession of those who conduct the prosecution, my creditors have seized everything that I had in the world, my acquaintances have been driven from me by your efforts to blast my good name, the only evidence within my reach is the testimony of those who are accused with me, *so strong am I in my sense of innocence, that, without having been permitted to approach them, without the slightest intimation of their views or intentions - fearless of the temptation to falsehood, which their hopes of escape or their fears of punishment may prompt - I state to you upon oath that it is my intention, if permitted to call Mr. Fletcher, Mrs. Dorey, and Mr. and Mrs. Sanders, to vouch for my innocence.* I admit that the question which you have to determine is, whether we worked together guiltily for a common purpose. How, gentlemen, let me ask, can that be ascertained if, in addition to the difficulties that you have already imposed upon me, you deprive me of the only evidence that I can call before you?”
12. Gentlemen, you heard that affidavit read, you saw the earnestness with which I pressed for a separate trial, what, let me ask you, what but the courage that always accompanies innocence, the fearlessness of truth, could have dictated that affidavit, or give earnestness to my importunity? Is not this consistent with Mr. Barber’s conduct [5] throughout? When first apprehended on this charge, who was the first person that he vouched to utter his innocence? Why, Mr. Fletcher. My learned friend has told you that he is a shrewd and a clever man, if he be guilty of the charge now urged against him, his behaviour throughout this investigation has been rather that of an idiot than a shrewd and a clever man. Does the guilty man cite his companion in guilt to procure his acquittal, especially in the case of this description, where, if both be guilty, the statement of the one must of necessity inculcate the other? But if Mr. Barber, in the apprehension and alarm of the moment, had been precipitately betrayed into the desperate effort of saving himself, by leaning upon his partner in guilt for support, he had ample time and opportunity for pause and reflection before finally adopting such an expedient, for my learned friend Mr. Clarkson, when he learned Barber’s determination to call Fletcher, sent to him, “Although I am counsel for the prosecution, I will step out of my way to caution you, for your own sake. Think what you are about, take the advice of some learned counsel, or your indiscretion may do you an injury.”
13. Here was caution enough, here was solemn admonition, calculated to awaken him to a sense of danger, if he believed that any existed. What was Barber’s reply? “I want no counsel but truth, no advocate but justice, I have nothing to conceal, publicity is my protection,” and, as a practical proof of his fearlessness, he himself opened the inquiry, which, by a strange fatality, has involved him in the perils by which he is now surrounded.

14. If, gentlemen, the learned Attorney-General seemed to be inconsistent with himself when he refused my application for a separate trial, what shall be said of his attempt to prejudice are case by his statement in reference to the Rev. Mr. Coxwell? “We have brought,” said he, “the Rev. Mr. Coxwell here,” and as if to shew that in our application yesterday for delay we had imposed upon the Court – [The ATTORNEY-GENERAL – I beg pardon, I drew no such inference.] – I am glad I am deceived as to the learned Attorney’s intentions, but the effect of such statements, unexplained, must lead to that conclusion.
15. To proceed with the announcement of the learned Attorney with regard to Mr. Coxwell, “the Rev. Mr. Coxwell, who was yesterday represented as being to ill to leave his house, did duty on Easter Sunday and Good Friday in his own church.” Now, gentlemen, let me ask you, what inference would you have drawn from such a statement as this after hearing our affidavit of yesterday, if I had allowed it to pass without comment? The learned Attorney-General will not deny that the certificate, as to the Rev. Mr. Coxwell’s health, was forwarded by his medical attendant, he will not deny that the letter put in as from the Rev. Mr. Coxwell was in his proper handwriting. [Here the learned Attorney-General nodded assent] I see my friend admits this [-] what then is the inference, gentlemen? Is it one creditable to the reverend gentleman? Is it not one shewing the fearful odds against the accused? Poor Barber! in his desolation, his loneliness, his misery, - might have laid before him his sorrows and his accumulated wrongs in vain, he might have said to this Pharasaical priest – “I am a broken man, I have toiled through life to earn fortune and reputation, up to the moment of this accusation my path has been lighted by hope, I have been led onward by the fruits of promise, in an instant, by the wicked contrivings and artifices of others, I have been struck down, the clamorous tongue of accusation has driven man from my side, I have no one to counsel me, no resources to purchase that which truth should offer, you, a minister of religion - of that religion whose promise is to bind up the broken-hearted - can in this dreadful hour furnish evidence, in some measure indicative of my innocence, will you come?”
16. “Ah! no.” He who, to use the phraseology of the learned Attorney-General, had *done duty* on Good Friday, the day on which we commemorate the consummation of His sufferings, who was a man of sorrows and acquainted with grief, that He might bring pity and consolation to the outcast and the rejected - who descended from the glories of heaven to the ignominy of earth, from the adoration of archangels to the revilings of demons - to teach those who taught in his name the vastness of the sacrifice that truth and justice require, he who had done duty (Heaven save the mark!) on that day, and on Easter Sunday, turned a deaf ear to the entreaties of the poor captive, but yielded a ready obedience to the invitings of pomp and power.
17. Gentlemen, what is the nature of the evidence Mr. Barber has to meet? A man ruined, a man without a penny, a man defended by the charitable contributions of a few – alas! how few! – bold enough to stand by him in this crisis, he is called upon to meet evidence from Perthshire and Edinburgh in Scotland, from Falmouth, Great Marlow, Wimbledon, and from the various offices in all parts of the metropolis. And will you not, gentlemen, yield him your sympathy? Don't [6] misunderstand me, I ask not for pity, I will not condescend to appeal to such a source of action, I demand - fearlessly demand - justice. Give me *that*,

and I undertake to shew you before I sit down that every fact contained in the complicated history of this case furnished by the prosecution, consists, entirely with Mr. Barber's innocence. Nay, more, I undertake to shew that that history is not compatible with his guilt.

18. Gentlemen, there is another source of apprehension which I feel it my duty to touch upon. I know well that power can always urge some pretext for its exercise, and I also know that there ever have been and ever will be servile instruments of that power fawning in its presence, eulogising even its tyranny, and persecuting those who resist it. I ask why is it that in the nineteenth century, in England, in a court of justice, whose demands should be uniform - why is it that the Crown uses privileges withheld from the subject? The rights of the veriest Lazarus that ever crawled into this Court should be weighed in as nice a balance as the jewels of the Crown, the privileges of the subject should be ascertained with as much scrutiny and criticism as the powers, immunities, and prerogatives of the Throne. Why, let me ask, does the counsel for the prosecution in this case demand a right of reply upon me, whether I call evidence or not? Does justice require it in this case? So does it, then, in every other. If not in every other, then in justice should the demand be resisted in this. I called upon the learned Attorney-General for a reply, and I beseech you to mark that reply. I remember well when the Prisoners Counsel Bill was mooted in the House of Commons

“And if they have writ their annals true,  
‘Tis there set down,”

that one Sir Frederick Pollock, in his seat in that house, said, “that it was a great boon to the prisoner, but that the House would be doing only half justice to the prisoner if he were not allowed the last word.” That was Sir Frederick Pollock in the House of Commons, we shall hear what the Attorney-General will say in the central Criminal Court. It was well said that entire justice required that the accused should have the last word. God knows I feel the force of that declaration today. I know that I shall be followed by one who will take advantage of every omission, who will avail himself of every indiscretion, and deepen the colour of every apparent stain. I can only entreat you to watch my opponent with all the vigilance with which you are capable. Beware lest sophism do the work of reason, beware lest the high standing of my learned opponent give to his dogmas and dicta, so much of authority, as to deter you from scrutinising, and criticising, all that he may say.

19. Gentlemen, another disadvantage under which my client labours, from mixing up his case with that of the other prisoners is, that of being followed by their learned counsel. My learned friend Mr. Greaves will, no doubt, in the discharge of his painful duty, feel himself called upon to urge every topic that may tend to exonerate his client. Whether in so doing he may find it necessary to seek to criminate Barber I know not, but experience has taught us that drowning men or sometimes in the agonies of overwhelming death - in their desperate effort at escape - drag down the living with them.
20. Now, gentlemen, let me, if you please, call your attention, in the first place, to the opening speech of my learned friend. The patience you have already exhibited in this investigation - the marked attention, the anxious inquiry that it has been my consolation to discover in the countenances of every one of you during this trial - I do assure you, without any affectation, has been to me a source of support and encouragement for which I am truly grateful, and so I am sure is my client. After directing your attention to the learned Attorney's speech I

shall comment upon the evidence and conclude by making such observations as it seems to me the evidence will justify.

21. In the first place the Attorney-General besought you to give your verdict according to the evidence, to that prayer I most cordially say – “Amen!” let your verdict be according to the evidence - not to what I may say - not to what my learned friends may say – nay, gentlemen, I will go still further, and without for one moment seeking to disparage him who presides as the judge in this Court, for whom I cannot be supposed to entertain any feelings other than those of veneration and respect - I entreat you not to take for granted even what may fall from the Bench. As you value all that you hold in the world - your reputation, your friends, your home, your liberties, as subjects, your rights as citizens, the nearer and dearer ties of domestic joys, as you expect justice in your hour of trial - as you value the holy institution - for holy it is, and I pray God ever may be - I mean Trial by Jury, I ask you today to let it be a trial by jury - let it be *your* verdict, [7] your honest, fearless, independent verdict. The laws of this country set too high an estimate upon the fate of the meanest subject to leave it to the unaided judgment or decision of one man. True, we place upon the Bench every guarantee that learning, high honour, and integrity can furnish, the judges of our land yield to no man in all that can dignify a human character, nevertheless, the law says - not, perhaps, in words, but in effect - estimable and venerable as you are, trying as the ordeal through which you have passed undoubtedly is, honourably as you have come out of that trial, pre-eminent as are the qualifications for which you have been elected to your dignities and duties, even to you shall not be left the interpretation of men's doings in any question of guilt or innocence.
22. A thousand unobserved circumstances may conduce to predispose one man to convict or acquit, education, private information, individual liking or disliking, nay, the very ignorance of the world, often induced by scholastic seclusion and literary pursuits, will unfit the most highly cultivated mind for deciding upon the ordinary occurrences of every day life. Therefore it is, that twelve men of character, engaged in the commerce of the world, conversant with its maxims, intimate with its motives, and well versed in its pursuits, are called upon to cast upon inquiries such as this the combined light of their knowledge and experience. Gentlemen, I, in common with many of my brethren have for some time past observed with something like dismay a growing tendency on the part of the Bench to usurp the province of the juries. If juries be true to themselves we have nothing to fear, but the very deference that we almost instinctively pay to the judicial character, the extent of learning discoverable in the dicta of the Bench, will frequently lull our vigilance to sleep, and gain assent in many instances to wrong impressions urged with all the effect that skill in advocacy can give them.
23. A “summing up,” as it is termed, is often neither more nor less than an extremely able reply of one who has been raised to the bench on account of his great talent as an advocate, and who has unconsciously taken a one-sided view of the case, upon the defence of counsel far less able than himself, and juries who do not take very great care to watch every word and every dogma, may be misled by those who do not intend to mislead, whose motives, I grant, are unimpeachable, but who are but men, like men prone to mistakes, and like men equally prone to propagate and justify that mistake.

24. Why, gentlemen, what does the every-day conversation of life show you? As persons are exalted they become the topic of remark. Do you not, in the avenues of the various courts that you attend, hear the criticisms of the bystanders upon the different judges that preside in those courts? Do you not hear that such a judge is a “convicting judge?” – (God knows an unenviable reputation) – that such another is “merciful judge?” in point of fact, are not the peculiarities of them all, topics of comparison, of praise or animadversion, as they may develope [sic] themselves? And do not such observations as these justify the wisdom of our forefathers in refusing to confide to one man a power so all important in its consequences as that of deciding upon the guilt or innocence of another? Before proceeding then, gentlemen, I again repeat the prayer of the Attorney-General - LET YOUR VERDICT BE ACCORDING TO THE EVIDENCE.
25. Do not, from this, suppose that I doubt your honesty of intention. NO! I, like the Attorney-General, know the dangerous effect of rumour after rumour, report after report, dark insinuation and wily innuendo [-] therefore, like him, perhaps, at greater length than he has gone - more emphatically than he has done - I warn you against the danger of yielding to anything but the force of the evidence that has already been adduced on the part of the prosecution, and that which I shall deem it my duty to lay before you for the defence.
26. The Attorney-General went on to state that he should show that Stewart had no relative but a brother. He has signally failed, he has shown no such thing. He has brought before you many persons who were acquainted with this Stewart at various periods of his life. Some who had known him in his youth, some in after life, some told you he had no relation at all, others that, as far as they knew, his only relation was a brother. Some that that brother went to India, some that he went to America, but not one of them has ventured to state as a fact within his own knowledge that he had no sister.
27. The Attorney-General went on to say, that in May, 1840, Fletcher went down to Marlow, and made inquiries of a man named Hyatt about Stewart. Gentlemen, I feel my own difficulties too acutely, wantonly to increase those of my friend Mr. Greaves, - it will, therefore, be my care to say no more of Fletcher than I am compelled to say - it squares neither with my inclination nor my duty to prejudice the case of Fletcher. With regard, therefore, to the visit to Marlow, I shall mix up Fletcher's name with that transaction no more than is [8] necessary to connect the incidents.
28. It is said that Mr. Fletcher gave the name of Jones, and his address as of 24, Little Guildford-street, Russell-square. Now, gentlemen, the Attorney-General tells you it was in May – remember *that* - that Fletcher was in Great Marlow. Upon the 25th June, Fletcher, according to their testimony, writes a letter to the witness Windsor saying that he had heard that Stewart had a sister about 12 years ago. To what address was this communication directed? – why, to Great Marlow, where Strode lived, where Coxwell lived, where all the acquaintances and friends of the late John Stewart lived, where all the different parties from whom Fletcher had been making inquiries lived, this letter was sent, I repeat, to Great Marlow announcing the fact that Stewart had a sister living twelve years ago. Can any reasoning man doubt that all the parties at Marlow were in entire ignorance as to the relations of Stewart? or that, if they had known that he never had a sister, they would have failed to

contradict this statement? It never was contradicted [-] you will, therefore, I presume, be of opinion that it could not be contradicted.

29. But gentlemen, I invite your attention to this letter the more, as tending to show that Mr. Hyatt is mistaken as to the time when Mr. Barber visited Great Marlow. You all observe that this letter bears date the 25th of June. Fletcher was at Great Marlow in May. Hyatt says, that Barber visited Great Marlow about a fortnight after Fletcher's visit, and would wish you to believe that Fletcher and Barber were, to use his own phrase, "both as one?" How does it happen, then, that in this letter, written, at the least, a month after Fletcher's visit, not one syllable is found relative to Barber's visit, which must have taken place in the interim. Besides which, one would suppose, had Mr. Barber been at Great Marlow only a few days before, this letter would have been perfectly superfluous.
30. But I shall not leave this to surmisings, conjectures, or hypotheses, I shall show you by and by, by positive testimony, that this Mr. Hyatt is about as wrong headed a man as ever came into the witness box, and, like all the wrongheads, you will not marvel, that he is obstinate in his error.
31. You were then told that Fletcher had made use of Mrs. Dorey to prevail upon Miss Hawkes to allow the letters addressed to Mr. Jones to be directed to her house. That fact I shall leave my friends, Messrs. Greaves and James, to combat, and proceed to those facts which immediately concerned my own client.
32. The Attorney-General then proceeded to state that about the time, or shortly after the time of Fletcher's visit, Barber went down to Great Marlow. I pledge myself to prove that that is utterly untrue. You will remember that I put a bill into this Hyatt's hands, he admitted that it was in his own handwriting, that the items of that bill corresponded in every particular with those of Mr. Barber, even to the hiring of the horse to the railway station at Maidenhead. That bill bears date 13th of October, 1840. I will show you that that was the day, and the only day on which Mr. Barber went to Marlow. That he was never absent from his office for a day, either in May or June, except upon one occasion when his clerk accompanied him to Rochester.
33. Gentlemen, there were reasons why Mr. Barber should go in October, there were none why he should go in May. In May, Fletcher had obtained all the information that could be obtained personally, and had left instructions that all further communication on the subject should be by letter, addressed to him, he had enlisted all the help that could avail him, and a further visit, therefore, in May, was superfluous. In October, circumstances were very different. Mr. Barber had been in communication - open communication, mind - in his own name - his own person, with Mr. Strode, and Pickering and Thompson, his attorneys. He was seeking to recover wages, moneys, and documents of the late John Stewart, supposed to be in the custody of Mr. Strode. Mr. Strode and his attorneys disputed his claim, denied the existence of any sister of John Stewart's, and refused, without further evidence, to yield up that which he claimed. It was to get this evidence - it was to recover the monies and documents in Mr. Strode's hands - not Mr. Barber went to Marlow in October.

34. This fact of itself, upon which I shall comment more by and by, speaks loudly in favour of Mr. Barber's innocence. It is impossible to believe, had Mr. Barber been guilty that he would have kept up the opposition and inquiry of Mr. Strode and his legal advisors, merely to recover a paltry amount of wages, after the principal sum had been obtained at the Bank.
35. But, to proceed with the learned Attorney's narrative, - "Barber," said he, "when at Marlow, gave the name of "Clarence Peckham, Esquire," admitting that at the same time he gave his right residence. When it suits the purposes of the prosecution they exaggerate Mr. Barber's mental powers, and you have been told over and over again, that he is an able man. He [is.] To his honour, be it said, he is a [9] man of vast literary attainments, far above the common order of men, you have it already in evidence that he was chosen to a situation which none were allowed to fill but men of high character for literature and integrity. That character he bore, to attain that character have been the end and aim of his existence, he has toiled for it whilst the indolent have slept, aye, whilst many who are here today - votaries of pleasure and of fashion - feeding their morbid appetites with his miseries - interested in proportion to the amount of his calamity - whilst they have been pursuing the painted bubbles floating in the atmosphere of fashion and dissipation - has been engaged in the toilsome labours of science, and devoting the hours, snatched from an arduous profession, to literature and philosophy.
36. Gentlemen, such occupations as these raise a man's mind above the chicanery and trickery of the swindler, and I thank the learned Attorney-General for his admissions on this point. I know that with the vulgar - with those who have never felt the ennobling effects of literature and science - who have never breathed the still, quiet air of philosophy - who have never left the world behind, and, in the untrodden regions of solitude, raised, the eye "from nature up to nature's God," with such as these I could hope to find no estimate of the stress that I lay upon the character of my client's pursuits.
37. But is it true that he is a cautious, prudent man? That he has all his lifetime been weighing cause and effect? - Is this true? If so, who can believe the glaring absurdity attributed to Mr. Barber in his visit to Great Marlow? They ask you to believe that he went down there for a wicked purpose, that in promotion of that purpose he sought concealment. If so, I ask, first, why did he go at all? why not Mr. Fletcher repeat [sic] his visit, if he and Barber had one common purpose? but, having gone, if concealment were his object, why give his address? why give the name of Peckham? Mr. Peckham was his clerk. If he had given the name of Clarence Smith, or Clarence Brown, and an address not his own, then could I appreciate the learned Attorney's inferences from Barber's visit to Marlow, but to give the surname of his clerk, and his right residence, for the purposes of concealment, argues a degree of irrationality that one would not attribute to an idiot - especially after Mr. Hyatt had told him he was coming to London in a week, and had announced his intention of calling at Mr. Barber's residence.
38. Gentlemen, it often happens, that in reporting conversations, we give the impression that the conversation made upon our minds at the time, instead of the conversation itself, and I cannot help thinking that Mr. Hyatt has done so in this instance. Is it likely that Mr. Barber, in directing a person to inquire for him, would instruct him to ask for Clarence Peckham, *Esquire*? - Is it not much more like the creation of a vulgar mind, like that of Mr. Hyatt's, who, no doubt, attaches great importance to the word "Esquire," and who, in inserting in



his pocket-book the description of the person who had visited him, well-dressed, and paying a tolerably liberal bill, and especially who had invited him to dine at his house - would, in all probability so describe him?

39. But, can any person for a moment believe that Barber courted secrecy when he referred him to No. 52, Nelson-square, there being, as I shall prove, at that time, and long before, and long after, upon the door of that house, a large brass plate, with Mr. Barber's name and profession so palpably written that he "who run might read" it? - But, again, is it not clear, that by giving the name of Peckham, Mr. Barber much increased the probability of detection? Mr. Peckham, as I before observed was Barber's clerk. It will be proved to you that Mr. Peckham was as well known in that square as Mr. Barber himself. As a matter of course, all letters directed to Peckham would be opened by him, and thus it is obvious that, by requesting that letters should be directed to Peckham, Mr. Barber ran the risk of revealing that, which they for the prosecution wish you to believe he was anxious to conceal from every eye but Fletcher's, to Mr. Peckham.
40. But what is my version of this? - When Mr. Barber went down, as I shall show you he did in October, the first person he saw was this man Hyatt, he asked him if he recollected a gentleman coming down sometime before and making inquiries about one Stewart? And here I will take leave to ask you what you think of the boldness of the witness Hyatt? Positiveness, gentlemen, is no proof of wisdom, nor any criterion of truth, its opposite, I think, in an inquiry of this description, especially in reference to a conversation which took place now some four years since, would find more respect from you, and yet, I have no doubt, that man, Hyatt, is what some people would call "a good witness," the meaning of which frequently is, a reckless, obstinate man, deposing to facts on which he knows he cannot be contradicted, and adhering to them with all the obstinacy that thoughtlessness and ignorance can engender. [10] He says "yes," and sticks to "yes," he says "it is so," and cannot be removed from "it is so." You may remind him of a common proneness to error, of the possibility of mistake, of the treachery of the human memory, you may warn him with the frightful consequences that may ensue from his pertinacity, still he exhibits no misgiving, and if he exhibits any feeling at all, it is one of exultation at the triumph of his obstinacy, and then good easy people say, "what a good witness!" Unless I am mistaken in you gentlemen, you have formed a different estimate of Mr. Hyatt, and there is one little incident in his evidence which will justify that estimate. I ask you to treat his memory as he treated it himself. Is it true that at the end of four years he can remember to a monosyllable a conversation between him and another? Is it true that a fact, once deposited in his bosom, remains in that depositary, hermetically sealed, until called forth at his bidding. If his memory be this inviolable casket of fact, why take the unnecessary precaution to write down in his book the name and address of this gentleman whom he saw, and whom he was about to visit at the end of a week? If such precautions were unnecessary to enable him with accuracy, at the end of four years, to recapitulate a conversation, even to an apostrophe or a note of interrogation, does not the very fact of his making that memorandum show to you that he feared to trust his memory with an incident that a schoolboy could carry without any such artificial aid?
41. But to refer to my version of this interview at Marlow. As I before stated, Mr. Barber asked Hyatt "if a gentleman had not come down to inquire after the affairs of Stewart?" Hyatt said,

“Oh, yes, a tall dark man, of the name of Jones.” Mr. Barber, not hearing the latter part of the sentence, or at any rate not heeding it, said, “Oh, yes, it is all the same,” and then proceeded to make other inquiries to enable him to answer Pickering, Smith and Thompson, with reference to Mr. Strode.

42. After he had done so, and when leaving, Hyatt having told him that he was coming to London in a week, Mr. Barber said, “If you have any communication to forward, and on your arrival in London do not find me at home, ask for my *clerk*, Peckham, who will answer you as well as myself.” Now, gentlemen, I ask you whether my version be not more consistent with truth and reason, than that of Mr. Hyatt? Whether it does not consist more with Mr. Barber’s character as a shrewd intelligent man, that he should have acted as I have stated, than that he should have pursued a line of conduct at variance with everything but monstrous absurdity and the grossest perversion of reason?
43. Have you noticed, during the course of this inquiry, how many times his Lordship, with all his acuteness and anxiety to get at the truth - have you noticed how many times he has been mistaken as to the words used by the witnesses. His Lordship, I am sure, has watched every tittle of evidence with the greatest anxiety. If then, with all his vigilance, we find him sometimes misapprehending what others say, shall I be accused of any libel upon Mr. Hyatt when I ask you to believe that he has mistaken “Clarence” for “*clerk*” especially as that is the only interpretation consistent with common sense?
44. But gentlemen, the learned Attorney-General has made two or three admissions of which I shall avail myself. He says that concealment and secrecy in this case were quite compatible with honesty of purpose. I do not thank the Attorney-General for this admission, because the fact is too obvious to be disputed. It is well known that many persons of the strictest honesty derive great emoluments by discovering to others their before unknown claim to property, both funded and landed, but whilst the investigation is going forward for the discovery of the right claimant, it is necessary that the party availing himself of his knowledge of the existence of such property should keep that claimant in ignorance until rewarded for the labours of investigation.
45. “But,” said the Attorney-General, “it is for you to say whether these inquiries were made for a genuine claim.” My learned friend ought to have gone further, and have said, not only made for a genuine claim, but *whether Barber believed that claim to be genuine*. – [The ATTORNEY-GENERAL – Those are the words I used.] - I need not tell you, gentlemen, with what anxiety I have attended to this case, I believe I’ve taken down every word of the Attorney-General’s speech. He delivers himself in a way that few can misinterpret, he is slow and emphatic, any one may follow him, and, what redounds peculiarly to his credit, may understand him. I made a note at the time indicative of my intention to carry it further in my reply. I have no doubt he intended to say it, but I assure him he did not say it.
46. My learned friend said that Barber spoke of Fletcher's visit as of the visit of Jones, and of his being of the same firm. The manner in which Hyatt gave his evidence upon this point astonished his Lordship, as I have no doubt it did most of you. He gave two or three different [11] versions of this transaction, at one time he said that Barber represented it to

be “all as one,” at another, “all the same,” at another, “that it was the same thing,” and lastly, “that they were of the same firm.”

47. [The ATTORNEY-GENERAL – My Lord, I find in the report in the public papers of my speech, that I am reported to have said what my learned friend accuses me of having omitted. Mr. BARON GURNEY - I believe you did use the words, but it is quite immaterial, the jury have to consider in this instance whether he made an honest or dishonest claim.]
48. Here is another instance, gentlemen, showing how liable we are to mistake. Had Barber been my own brother - had this case been my own - I could not have watched the Attorney-General with more anxiety than I have done in this case, and yet with all my vigilance it seems I have misrepresented what the learning Attorney-General said. I am convinced that I have done him wrong, and I am sure he will accept my apology, when I express my regret.
49. But, gentlemen, does not this show the danger of positiveness in reporting from memory the sayings of others? and am I not justified in beseeching you to receive with the greatest jealousy the evidence of that man Hyatt? It is by no means improbable that Mr. Barber might have said that he and Mr. Fletcher were upon the same errand, that they had the same object of inquiry, and that Mr. Hyatt may have rushed to the conclusion that they were of the same firm, and afterwards had given his conclusion as that which actually did take place.
50. The next point in my learned friend's address was, that both Fletcher and Barber were told that John Stewart had no relation but a brother, but it is quite evident, from the testimony of the witnesses before you yesterday, that not one of them was capable of giving a distinct answer upon that point. I know not whether Mr. Fletcher were deceived as to the existence of a sister of John Stewart's, but whether he were deceived, or whether he originated the deception, there can be no doubt that the same information would be given to Mr. Barber by Mr. Fletcher, and it is quite clear, from what has already been proved, but there were no persons at Great Marlow - neither Strode, nor Coxwell, nor any other person to contradict it.
51. One of the witnesses said that his dialect was that of a Scotchman - another that it was not, and you must have discovered that the whole of the evidence, with regard to Stewart's history, is of the loosest and most unsatisfactory kind.
52. But, had Barber believed that Stewart never had a sister, how can you explain his conduct? He wrote to Mr. Strode claiming an arrear of wages and papers belonging to John Stewart deceased, and, - on whose behalf? why, on behalf of his *sister*, threatening him with legal proceedings if those wages and documents were not given up. Can you believe, then, for a moment, that Barber was not fully convinced of the existence of a sister? would he have dared to threaten Mr. Strode, to beard his legal advisers, one of the most respectable firms in London - who were, be it remembered, at that very time, expressing their misgivings and suspicions, exhibiting the most determined opposition to his claims, and would he have dared to have acted as he did if this avowed sister had been an impostor of his own raising up? Such a proposition seems to me too monstrous to need refutation.

53. We come now, gentlemen, to that portion of my learned friend's observations in which he tells us that Mrs. Dorey, then Miss Richards, was living with her mother at Mr. Wybro's [sic], in Rathbone-place. Gentlemen, it is not for me to say whether Mrs. Dorey be guilty or innocent, her interests are confided to one quite capable of protecting her, but this much I will say, there is not a tittle of evidence before you to show that Mr. Barber was ever seen at Wybro's in his life. It is true that the young gentleman, Mr. Sydney Hampden Wybro, said that he "appeared to think he had seen Mr. Barber there," but he could not positively say that he had. The truth being, gentlemen, that Mr. Barber was never there in his life, and I feel confident that you will be convinced, before you come to the close of this case, that Mr. Barber took neither part nor interest in the matter, until all the preliminaries had been arranged and settled, and that the part which he did take was perfectly consistent with honour and honesty.
54. In July we are told that Mrs. Richards went from Rathbone-place to Southampton-terrace, Camberwell, that she passed by the name of Miss Stewart, and was visited daily by Mr. Fletcher. Barber was never there in his life. Fletcher takes the lodgings for her, and introduces her as Miss Stewart. On the 3rd of July, Fletcher and the old lady went to Mr. Pott's, the proctor, Barber was not there. Fletcher gave instructions for the letters of administration, Barber was not there. Fletcher described the lady as the sister of the deceased, the description imposed upon Mr. Pott as it did afterwards upon Mr. Barber. Fletcher gave instructions for the papers and necessary documents, Fletcher furnished instructions for filling up the stamp-[12]office affidavits, Barber knew nothing of them. Fletcher gave the name of Thomas Griffin as one of the sureties to the bond, necessary to be prepared before granting the letters of administration. As far as Griffin is concerned, there is no evidence that he ever saw Barber in his life till after all had been prepared for obtaining the money from the Bank, and then, only twice. From the first to the last there is not a word – a hint – a sign - pointing to the cognizance of Barber.
55. Now, if Barber were an accomplice - a part participator in the gain - of which I shall speak presently, why was he not called upon to take his part in the drama until all the difficulties had been surmounted? why was he not consulted at these various stages of the proceedings? We are told that Fletcher importuned the witness Keene to procure another surety for the bond. Gentlemen, had Barber been a guilty participant, he would have been the fittest person to have obviated any preliminary difficulties, from his knowledge of the law he would have been far more capable of carrying out these arrangements with effect than any of the parties who were engaged in the earlier parts of the proceeding.
56. Now, gentlemen, no one insinuates anything to the disparagement of Mr. Keene, he is admitted on all hands to be a respectable man. What would have been said of Mr. Barber if, in utter ignorance of the parties and the transaction, he had procured a surety to this bond? would it not have been hurled at him as proof of his guilt? There can be no doubt that it would, and yet how unjust would have been the reasoning upon such a state of facts!
57. Was the bond a forgery? They say it was, and it is for the alleged forgery of that very bond, that my client, with others, stands before you. Why then was Keene, unwittingly I grant you, accessory to that forgery, what would be Mr. Keene's answer to such a charge? Why this, - all the preliminaries seemed to have been arranged so satisfactorily, everything appeared so

straightforward, the documents so properly filled up, every difficulty so clearly explained away, and, though last, not least, Fletcher appeared so respectable a man, that I did not hesitate to do it for him. And mind, this is the answer of one, who for the last twelve years has been unceasingly occupied in investigating affairs of this kind.

58. What is Mr. Barber's answer? It is an echo of Mr. Keene's. And he asks for the same credit to the explanation of his conduct.
59. Gentlemen, I do not want to increase the difficulties of Mr. Fletcher, he has grown grey with sorrow in the short time of his incarceration and trouble, but when necessary to explain the conduct of my client, I must bring him before you. Mr. Barber says - "I regarded Fletcher as a respectable and valuable client - as such I treated him, and confided in him." To those who conduct this prosecution he says, "I defy your persecuting, and cruel as you have been - anxious for my ruin as you may be, I defy you Messrs. Freshfield and Weir - I defy your myrmidons and spies who have watched my every step - who have retraced every page of my history with lynx-like avidity and vigilance - I defy you to show that I ever held with Mr. Fletcher or with Mrs. Dorey any other communion or converse than that which should exist between attorney and client. I never saw Fletcher but in my own office, I never broke bread with him, I never interchanged sentiments with him. True, he is a client of mine - he has been so since 1838, I have transacted business of the most important kind for him, I have conducted actions for him involving interests of the greatest extent, I perfected mortgage after mortgage for him, and knew him to be a man who stood high in society, both in point of wealth and reputation, from me he has always received that respect which a young attorney would pay to such a client, and that credence and confidence which his position seemed to justify."
60. Gentlemen, I ask you to view my client's situation and conduct, not as those who have got up this prosecution regard it - not as persons seeking to justify accusations - not as those whose suspicions have been provoked by after circumstances, but regard it as you would have done had you been in Mr. Barber's place in the presence of such a client. Would you not have done as Mr. Barber did? Where, let me ask, have the prosecutors found the index to all the evidence? - would you believe it gentlemen? - in Mr. Barber's office! In his diary! Every event, every name, every date, is found recorded, every paper, every letter, every document, connected with this transaction, is found in Mr. Barber's office three weeks after his apprehension.
61. Yes, gentlemen, although Mr. Clarkson, as counsel for the prosecution, stated at the Mansion-house that they were hunting Scotland and Ireland, raking her Majesty's dominions for evidence against Mr. Barber, yet, three weeks after that announcement, in Mr. Barber's own office, bound up with the name of Stewart outside, is every document found, to furnish the parties who conduct this prosecution with every tittle of [13] the history by which they seek to effect his ruin. All this time his clerks were going to and fro to receive his instructions as to affairs then in the office, and yet to no one does he hint any fears or apprehensions with regard to those papers. Surely, had he been apprehensive of any information that they could give, of any clue that they could furnish to a discovery of his guilt, instinct, to say nothing of a reason, would have urged the necessity of their destruction. To show you, gentlemen, the reliance of my client upon the integrity of Mr. Fletcher, but a few weeks

before his apprehension, he recommended Mr. Fletcher as one of the trustees to a property amounting to £30,000, and Fletcher was appointed accordingly.

62. The Attorney-General has told you that Fletcher paid the probate duty. That may be so, Barber was not there. An affidavit was prepared partly from Fletcher's instructions, and finished by Barber. Gentlemen, I repeat, that before Mr. Barber appears in this transaction, everything, as far as appearances go, had been formally arranged. The remaining instructions which Barber was called upon to furnish were purely of a technical and professional character, and such as any other professional man would have furnished, excepting, perhaps, Mr. Freshfield, whose vigilance in protecting the interests of the Bank is always in exercise.
63. The next assertion of the Attorney-General's is sheer assumption. He says that Barber and Fletcher perfectly well knew that these were fraudulent schemes. My only answer to that is, that it is not true. There is one assertion met by another.
64. We then come to the fact that Potts's clerk, Keene, procured a relation of his, named Gregory, to become the other bondsman, to this Barber was no party. The bond is executed by Gregory, Griffin, and Elizabeth Stewart, Barber is no party to this. Stewart, Griffin, and Gregory, went to Dr. Robertson's and the surrogate, Barber was not there.
65. It was thought desirable to get a registry of baptism to connect John and Elizabeth Stewart [-] certificates - that of John Stewart, dated 1761, that of Elizabeth, dated 1763, both from Marylebone, were produced. My learned friend said, and he laid very great stress upon it, that he should prove that Barber had been told that the deceased was a Scotchman. Is that fact at all inconsistent with the fact of his having been born in Marylebone? Is it an unheard of thing that a child should be born of Scotch parents in England? or Is it an impossible event that those parents should return with their child to Scotland? It is pretty clear the name of Stewart, being a Scotch name, that John and Elizabeth Stewart, the registers of whose baptism have been produced before you, were the children of Scotch parents, and it is very likely, indeed, that such children may be born in London and educated in Edinburgh, but this is just one of those incidents upon which suspicion pounces to justify its accusations.
66. Gentlemen, you will take care to distinguish between the ordinary reasoning of an honest man in the every-day business of life, and that mode of reasoning which too often, for the ends of justice and of truth, characterises those who, what is not inaptly termed, "get up a prosecution." it is one thing to comment and observe upon events as they pass, and another to revert to them and criticise them for the purposes of accusation.
67. Gentlemen, what is meant by "getting up a prosecution?" We are too apt to deceive ourselves with mere words, and men, who would be shocked to be told that they were lending themselves to persecution and oppression, will too frequently be found exercising all their powers of judgment in exaggerating every fact that may tell against the accused, and suppressing every incident in his favour - urging every construction that tallies with guilt, and wilfully suppressing arguments that would hint even at the possibility of innocence.
68. But, gentlemen, to revert to the narrative of the Attorney-General. The certificates of John and Elizabeth Stewart were produced. My learned friend admits – and a most important

admission it is - that these certificates would mislead anyone who did not know Stewart's history. Would they? Who *does* know that history? The Attorney-General does not, much as he catechised witness after witness, old and young, Scotch and English, master and servant, he does not know his history to this moment, and unless I am mistaken, my learned friend Mr. Greaves will avail himself of the Attorney-General's ignorance on that score. You may be told that one man said he had no relations at all, another, that he had a brother who went to India, another, that he had a brother who went to America, that he went to school with one, worked in Scotland with another, at Wimbledon with another, at Marlow with another, but whether born in Marylebone or in Dumfriesshire, no one can tell, whether an only child, one of two, or one of three, all are profoundly ignorant.

69. I take the liberty, then, to bind the Attorney-General to his admission, that [14] these certificates would mislead anyone ignorant of Stewart's history. Mr. Barber professes to know nothing of that history more than he has learned from his client. He did as all attorneys do - he acted upon his instructions, and I have yet to learn that either the interest or duty of an attorney should prompt him to treat his client as a swindler or impostor.
70. The statement pointing out the connection between the parties, in Fletcher's own handwriting, was found in Mr. Barber's office. What! the paper covered, as my learned friend says, with inconsistency and fraud from beginning to end - the paper furnishing my friend, as he thinks, with strong arguments against Mr. Barber, the shrewd, the clever, the cautious, the cunning Mr. Barber - found in his office, unconcealed, open to the inspection of all his clerks, eleven in number, with the name of "Stewart" in large characters on the outside, three weeks after his apprehension! Gentlemen, I ask you whether candour and honest reasoning would not rather hold up that paper as proof of Barber's innocence than use it for his destruction?
71. How do guilty people act? Try this case as you would any other. Does the murderer hoard, or rather, perhaps I should say, make a show of the instrument of death by which he effected his crime? Will he not rather bury it a thousand fathom deep? Will he not, if possible, wash out in the waters of the ocean the stain of his victim's blood? Does not the thief, by immediate disposal of his plunder, seek to remove all evidence of his guilt? Why, then, should my learned friend seek, in an exception to the ordinary rules of guilty conduct, proofs of guilt? Had Barber known that he had been a principal in the highest fraud known to our laws, would he have sedulously preserved the memorials of his guilt? - would he have invited attention to them? Experience answers no, and the learned Attorney-General is compelled to admit that "these papers, found in his possession, are consistent with his character as an innocent attorney." Indeed! Then, why not, in the name of all that is fair and reasonable, adopt that construction?
72. It is then said that Barber knew that Fletcher was acting under the name of Jones. Gentlemen, this I deny, and if I prove to your satisfaction, as I hope to do before I conclude, that Barber never went down to Marlow at all till the month of October, then all the animadversions of the learned Attorney-General about Mr. Jones fall to the ground, because in October, when Barber went down to Marlow, everything had been completed, but - what? Why, the recovery of the papers, and the wages due to Stewart, said to be left in the hands of Mr. Strode. To suppose that Barber would so jeopardise himself after the

achievement of his main object, argues a lack of reason that no man should with impunity in my presence, attribute to the Attorney-General.

73. It is very probable, when Mr. Barber asked Hyatt if he remembered a gentleman coming to inquire about John Stewart, that Hyatt should answer, "Oh! Yes, a tall, dark man, named Jones," and it is equally probable that Mr. Barber, looking only to the object he had then in pursuit, not heeding the latter part of the sentence, may have answered, "Yes, it is all the same," or "It is all as one," or something to that effect. You know well that if you are asking a question with reference to a particular object, that object to you of paramount importance, your attention is directed entirely to the answer to that question, or to that portion of the answer to that question which you deem material. So with Mr. Barber, all that he wished to recal [sic] to the remembrance of Hyatt was the fact of a gentleman having been there about Stewart's affairs. It mattered little as to the name, especially when Hyatt described him as a tall, dark gentleman. I am sure I am only urging that which is in accordance with your experience, besides which, gentlemen, at this time all was completed, and use of the name of Jones could avail nothing.
74. The Attorney asks, was there any other person named Jones who had before been to Marlow to make inquiries respecting Stewart? My answer is, I do not know, but I think it by no means improbable that Barber might have been led to believe so. It is quite clear that Barber has been deceived by someone, and, for aught that appears, the story about Jones may form a link in the chain by which Mr. Barber has been fettered, but, says the Attorney-General, they could have told who the brother was, where he died, and where he was born. So they could, and can you have any doubt that such an account, true or false, was furnished to Mr. Barber? If any doubt exists, let me refer you to the correspondence with Messrs. Pickering, Smith and Thompson. You will there discover that the history of Stewart's sister, such as it was, had been furnished to Barber, but you [15] cannot suppose, had Barber believed it to be a fiction, that he would have published it as he did. He must have known that, if Messrs. Pickering and Smith thought fit to dispute Miss Stewart's claim, they might have entered a caveat against it in half an hour.
75. Well, then, my learned friend told you he should put Griffin into the box, admitting that Griffin's participation in the affair proved his infamy. Of him I shall say very little, but you will bear this in mind that, from the beginning of his statements to the end, we find nothing tending in the slightest degree to criminate my client.
76. We come now to the 24th of October, when the stock was transferred. My learned friend told you he should put in the correspondence between Barber and Strode, he has done so, and to that correspondence I particularly invite your attention. I have been spared the trouble of calling the Rev. Mr. Coxwell before you by the production of the correspondence between him and Mr. Barber. To that also I most respectfully invite your attention. You will also do well to examine the letters from Mr. Strode's attorneys to Mr. Barber, and his replies. After the money had been transferred, when no claim was left but the paltry one to an arrear of wages, you find Mr. Barber acting as fearlessly and independently when seeking the amount of the unclaimed dividends at the Bank. Had he been guilty, had he by fraud obtained thousands of pounds, would he, think you, have kept inquiry alive, and braved the



anger and resistance of those who had shown themselves his opponents for the risk of obtaining something or nothing, as the case may be?

77. On the 7th of October Barber applies for the stock receipts on behalf of Miss Stewart, and you have heard Strode's answer, in which he refers him to Pickering, Smith, and Thompson. He goes to their office, he has an interview with Mr. Bazant [sic], who tells him in plain terms that they do not believe that Stewart ever had a sister, still Mr. Barber perseveres - not secretly - not by instruments - but openly, in his own person, perseveres. Pickering's clerk tells him that the affidavits are not satisfactory, and asks for information as to the birth of the parties. Mr. Barber points to the affidavit, which states that these certificates are filed, and expresses surprise and indignation that that which satisfies the Prerogative Office should not satisfy them.
78. I come now, gentlemen, to the part of the case requiring your most serious attention. You were told Mr. Barber accompanied a female to the bank [sic] to receive the dividends, and here I will take leave to observe that Mr. Barber's attendance at the Bank for the purposes of obtaining the money was wholly unnecessary, he might have kept - and no doubt, if guilty, would have kept - entirely out of view. But the Attorney-General says that which I unhesitatingly pronounce to be absurd upon the face of it. He says that this female was another and a different person from her whom Mr. Barber had seen at the proctor's office, I say she was one and the same. There, again, is assertion against assertion, and now let us proceed to ascertain which is the more entitled to respect.
79. On what premises does the Attorney-General found the inference? Certainly on no positive testimony, for Mr. Hill, the only witness who speaks to the fact, says - that the time is so long since, that he cannot take upon himself to swear whether the female were aged or not, that his impression is that she was between forty and fifty, but he would not take upon himself to swear one way or the other. But has my learned friend forgotten that, in order to satisfy the Bank authorities, it was necessary that the certificates and affidavits should be produced, which would at once declare her age? And is it not clear that that description would show a woman of forty or fifty to be an impostor, and thus provoke investigation and lay bare the whole fraud?
80. Gentlemen, my attention has been directed as well as yours to the signatures to the different documents. At present, I confess, I am at a loss to know what use my opponent intends to make of those signatures, the character of the writing appears to me to be the same, of that you will judge for yourselves. Perhaps it may be said that some of them are written with "Elizabeth" in full, in some, with an abbreviation. This may be reasoning, but I ask the three learned judges now sitting in his Court whether they would subject their reputation to such a test as this. How often does it happen that the signing of one's name depends upon the hurry or even caprice of the moment, and yet this is a mode of reasoning worthy of a great government to crush my client. In one case it appears that Elizabeth is spelt with an "o" instead of an "a," that, I think a circumstance in favour of my client at any rate. Had this been a forgery, and especially a forgery by an educated man, depend on it, care would have been taken to spell the name uniformly.

81. But what was there to deter Mrs. Richards from going to the Bank? She had already surmounted every obstacle, she had [16] braved every danger, had sent for Griffin, had met him in St. Paul's Chain, gone to the proctor's twice, to the surrogate once, had paid Griffin his hire, why then, when the fruits of her intrigues and labours were within her reach, leave the end, to which all her former efforts had been the means, to be fulfilled by proxy? No reason, as it seems to me, can be suggested, but there is another answer to this statement of the Attorney-General's, which I hold conclusive.
82. You will remember that on the afternoon of the day on which the dividends had been received, Hill went to Barber to demand from him £3 3s 9d, which, by mistake, he had overpaid him. Now, gentlemen pray attend to this. Is it true that Barber as the Attorney-General alleges, had on that day being guilty of a twofold crime, namely, forgery, and false personation, both of which, if detected, would destroy him, that he had completed that to effect which all his self-possession and courage would be insufficient, - is that true? How then, think you, would he have acted when Mr. Hill came to him with a trifling claim, which, if not immediately satisfied, would, in all probability, lead to inquiry and disclosure, - would he not with trembling hand have given the amount, if it had been ten times the sum? But what does Barber on this occasion? he admits the mistake, and directs him for reimbursement, to whom - and where, do you think? why, to *Miss Stewart, Southampton-terrace, Southampton-street, Camberwell*. Aye, they ask you to believe that Barber had been palming a middle aged woman upon Hill as a veritable Miss Stewart and that then he is so besotted as to send Hill to see the old lady of seventy-five to proclaim to him how he had been duped. The old lady who was described as tottering about upon an umbrella, with weak eyes, and extremely infirm, why, if Hill had gone to Southampton-terrace, Camberwell, and Barber had every reason to suppose that he would, if the Attorney-General's statement be true, he would in an instant have discovered that he had by trick been made an accomplice in a fraud, and, as a matter of course, gone to the Bank of England, and exposed the whole affair.
83. The Attorney says it was necessary that some persons should identify the female, and so it was, and I shall show you from the conduct of that other person, that Barber did no more than the most respectable professional man in London would have done. Fletcher, as I before stated, was regarded by Barber as a valuable and respectable client - he had introduced the lady to Barber as Miss Stewart - had introduced her as a respectable woman - furnished her pedigree, and stated that she came from America. She was old and feeble, well dressed, sober and respectable in her demeanour, and surely, gentlemen, if there be anything calculated to disarm suspicion, it would be age, so attired, and so introduced. Would the most cautious man even dream that tottering age was carrying fraud and deception in its feeble embrace to the very confines of eternity? Surely, no! I do not think there is one of you, had you been in Barber's place, that would have hesitated to do as he did.
84. Gentlemen, suppose that Mr. Hill's conduct were now subjected to that scrutiny by which you were asked to analyze Mr. Barber's doings. Suppose Mr. Hill were to be asked why he identified this lady as Miss Stewart, what would be his answer - "I did so as a matter of course, she was introduced to me by a man of standing and high character, one whom I had known for years, and I took his word." - what more or less does Mr. Barber say? How is society to consist without that faith and confidence which reputation begets? It is easy to censure when the consequences of misplaced trust develop [sic] themselves, but when

called upon to form an opinion of the intentions of another, would you form that opinion on an isolated act? Would you not inquire, what had led to the fact upon which you were to decide? Would you not take pains to ascertain whether it were consistent with ordinary usages and established practice?

85. Most men would say that to sign one's name to any document, without ascertaining its contents, is foolish and incautious, and yet some of the wisest among must do this every day. The judges do so - the clerks bring them papers to sign, and they do so, without inquiry, as a matter of course. It might happen that the clerk is a dishonest man, that he wickedly places before his venerable master a writing, which, when executed, may effect the ruin of an unoffending party, would any man, therefore, censure the judge who had thus inadvertently been ancillary to injury? Surely not. The answer to any imputation on the judge would be - "I confided to one who had been long in my service, his character for honesty I thought had been well tried, and in whose motives I had every confidence." So with members of the bar. Pleadings are frequently brought to us to sign, and in the multiplicity and hurry of business, we look to the name of the firm from whom the pleadings [17] come, and sign them as of course. Mr. Barber pleads the usages of his profession. The papers have been produced to him by one whose word, in his opinion, was above suspicion [-] by this man had the female been introduced as Miss Stewart, confiding, as he well might in his client, he did not hesitate to comply with his request.
86. To satisfy inquiries at the Bank it was necessary a broker should identify the party [-] to whom did Mr. Barber go? Not to a stranger, not to one whom he might never see again, but to a man of the greatest respectability, to whom he had been known for years. To Mr. Hill Mr. Barber introduces Miss Stewart, as Miss Stewart had been introduced to him by Mr. Fletcher. Oh! but it has been said £630 were paid in notes, and the rest in gold. It is quite clear that this was a circumstance in itself of but little moment, for when the fact is mentioned to Barber by Hill, Mr. Barber gives a reason with which he himself had been satisfied, that they were silly country people - but there were rumours of war - and they were fearful, in consequence, that bank notes were insecure. Gentlemen, you need not be reminded of the apprehensions of war that then prevailed, nor will it be incredible to you that country people, under such circumstances, should prefer gold to paper. At any rate it is quite clear that the explanation satisfied Mr. Hill, for he makes no further comment upon the matter.
87. But now, gentlemen, I lay great stress upon a most important admission of the Attorney-General. A large sum of money was drawn out of the Bank. Those gentlemen (pointing to the solicitors for the prosecution) have had every opportunity of investigating Barber's affairs. For months past they have had possession of every book and paper belonging to my client. They know at this moment he has not a halfpenny in the world - the furniture of his office and of his house - nay, the greater portion of his very wearing apparel - all - all, have been sold to meet the demands of his landlords for rent. The expenses of his defence have been furnished by the contributions of a few who have wept over his misery. All this they know. The Attorney-General admits that all that Barber received for his numerous attendances and exertions was £30, and he also allows that that sum was no more than a professional remuneration. Why, then, charge him with guilty knowledge and intention? was it a trifling risk to incur *had* he been guilty? What, jeopardise his liberty, his home, his hard-

earned reputation, his professional prospects, for sport - merely for the exercise of that ingenuity for which they have given him credit? You will hardly think the motive adequate to such a hazard. In what light, then, can Mr. Barber's conduct be regarded in this matter, but as merely professional?

88. Gentlemen, I come now to the application made to Donald Macpherson, the sessions clerk, the letter is proved to have been written by Fletcher. There is no evidence that it was ever seen by Mr. Barber. The answer was found carefully preserved amongst the papers in Mr. Barber's office. And what is somewhat singular, in the office diary will be found the most minute mention of almost every incident connected with this correspondence, of course adopting the views of the prosecutors for the purpose of furnishing evidence against himself.
89. Mrs. Dorey's confession, as it has been designated, is then put in.
90. We are then called upon to give a history of Miss Stewart, the only history with which we are acquainted is that which we published to Messrs. Pickering, Smith and Thompson. If the publication of that history has deceived others, we regret it, but Mr. Barber, himself, has been deceived. The Attorney-General concludes his speech by calling upon you for an honest, fearless, upright, and firm discharge of your duty. To that I say again, from my heart, "Amen!"
91. Gentlemen, your duty to the prisoners will indeed require firmness, prejudice gapes for a conviction, popular clamour loudly, without trial, condemns the prisoners, and it will require firmness to stem the torrent let loose by the public press.
92. The first witness called was JOHN SEATON, for the production of papers and documents, about which I will not detain you. Dr. ROBERTSON, GEORGE BENNETT, JOHN POWELL, JOHN BEETON, CHARLES DAWES LEWIS, say nothing that in the slightest degree implicates Barber, over their testimony, therefore, I pass without comment.
93. The first witness whose testimony demands a pause, is HENRY HYATT, upon whose positiveness and want of caution I have already observed. But you will perceive from portions of his evidence that his story is a thing of shreds and patches, clumsily knit together, and in many parts of it either unintelligible or absurd. He told you that Barber said there was a great deal of property in the neighbourhood of Chelsea, something about the sinking fund, something about £600, and that Stewart's property in the sinking fund died with him. It is utterly impossible that Mr. Barber could have talked such nonsense, but I quote [18] these passages in his story to show you the extent of this man's ignorance, how dull his comprehension, how imperfect his memory. Upon the other parts of his statement I have already troubled you at some length, and shall therefore for the present bid adieu to Mr. Hyatt.
94. The witnesses who follow, WINDSOR, HOLMES, MACLEAN, and LOOSELY, are called, I suppose, to corroborate Hyatt. Strange corroboration, only one of them can identify either of the prisoners, not one of them has any recollection as to the time of Barber's visit. One says, it might be a fortnight, or it might be four or five months after Fletcher's visit,

another cannot say whether Mr. Barber came in the spring or in the autumn, another knows not whether it were in May or in October.

95. No doubt you noticed that in the examination in chief, before their accuracy and memory were tested, almost all of them stated that Barber came in a fortnight or three weeks after Fletcher. You will be at no loss to account for this, Mr. Weir has been drilling these witnesses. One of them told you that he had had four interviews with Mr. Weir on this very subject, that Mr. Weir had put to him what we call leading questions, which is in truth suggesting to a witness that which should be supplied by his own memory. Mr. Weir asked him if he did not remember a gentleman coming down in May, and another following him in a fortnight or three weeks? The simple old man answered "Yes," but, leave the witness to his own resources, ask him, as a matter of his own recollection, when Mr. Barber came to Marlow? And you must discover at once he is utterly incapable of giving any satisfactory reply. Do you not discover now, gentlemen, how it was that these old men fixed Mr. Barber's visit at a fortnight after that of Fletcher's? By your smile I see you do.
96. Now, gentlemen, when I put in Mr. Hyatt's bill, the Attorney-General tested it by the aid of a most powerful lens, and I think he will be candid enough to admit, that there is nothing about it to justify a doubt of its genuineness. Mr. Hyatt's account books were produced and compared with the bill by my friends opposite, without having seen them, I defy the counsel for the prosecution to disparage the account. They have not dared to put those books in evidence? From *that* you will draw your own inference.
97. But, let us see what these witnesses say as to the history of Sttewart. Windsor says that he had a brother, Holmes, that he had heard that he had no relations at all, Maclean, without any hesitation, asserts that he is positive that he had neither kith nor kin, Loosely professes entire ignorance as to his family connections, and assigns as a reason for his ignorance that he was a very close man. This is what the Attorney-General calls satisfactory evidence, that he had no relations but a brother. What may satisfy counsel for a prosecution I do not pause to inquire, but, unless I am deceived, your scruples are not so easily removed.
98. The next witness is SARAH HAWKS, who described to you Mrs. Dorey's visit and her application to be allowed to address Mr. Jones's letters to her house. She is followed by EMMA HARTWELL, who tells you that in the beginning of the spring of 1840, Fletcher took apartments in Southampton terrace for a feeble old woman, whom he introduced as Miss Stewart, Barber was never seen there in his life. WYBRO, of the temple of Apollo, is then called, who tells you he has long been acquainted with Mrs. Dorey, that, when Miss Richards, she and her mother, who was about 75, launched at his house till the summer of 1840, universal Barber in his life. The evidence of his son, SYDNEY HAMPDEN WYBRO, is to the same effect.
99. Mrs. KESYIA [sic] DIXON and Mr. M'PHERSON, both are unimportant so far as Barber's interests are concerned. Mr. JOSEPH PARKS [sic] produced certain papers, which he tells you were all tied up together, placed in a tin box in Mr. Barber's office, with the words "Stewart's Papers of Administration" endorsed upon the packet in Barber's handwriting, and this, remember, three weeks after his apprehension. EDMUND KEENE says nothing effecting Barber.

100. On the 24th of October the stock is transferred - that is proved by WILLIAM SMEE and EDWARD CLOSE WILKINSON. JOHN WELDON, a clerk in the Will Office, produces an entry in the "Taking-in book," dated the 18th of October, 1840, in these words - "Letters of Administration, purporting to be those of John Stewart, were left at the Bank for registration." This was preparatory to an application for the restoration of the stock, at the same time were produce the burial extract, baptismal certificates, the burial certificates, and a letter from Mr. Coxwell. Did these documents and testimonials satisfy the Bank authorities - guardians of the public property, having at their control all the appliances of skill and experience, what marvel, then, that the same contrivances would deceive Mr. Barber? WILLIAM JOHN DONALD proves the handwriting of Barber to a letter dated 15th October, 1840, addressed to the chief accountant at the Bank, respecting the transfer. [19]
101. Give me leave to ask you, gentlemen, why this parade of Barber's name? How does it happen that in every public transaction you find Barber? I do not think that Mr. Fletcher's name will be found appended to any single document throughout the whole case. You find Mr. Barber writing to Mr. Strode, to Mr. Coxwell, to Pickering, Smith, and Thompson. You find him at Potts's, the Bank - with Mr. Hill, appearing when his attendance might well have been dispensed with, and in every stage of the proceeding exhibiting the most perfect fearlessness.
102. I now come to the evidence of Mr. HILL and you will not forget his statement with regard to Mr. Barber's character. He has told you Barber was a member of the committee of the Southwark Literary Society, - that he was elected to that office for his moral and intellectual qualities, - that the committee consists of persons of the first rank and respectability in the borough of Southwark. Surely this will weigh heavily in his favour, when you come to test his motives and intentions - and I shall be able to show, by and by, from a host of witnesses, that Barber bears a character that few can boast of.
103. Mr. Hill tells you that he has known him since 1838, and entertains a high opinion of his reputation. The learned Attorney attaches much more importance to Mr. Hill's statement, with reference to the female whom he identified, than I am sure Mr. Hill does himself. He says, to use his own words, "As well as my memory will serve me, I thought her between forty and fifty - to the best of my recollection she was not feeble - but the time is so long since, I really cannot remember. I have no distinct recollection." Would anyone have supposed that this was the nature of the evidence upon which the Attorney-General founded this charge of fraud against Mr. Barber? Mr. Hill, a conscientious man, dares not rely upon his own memory as to this transaction, with what show of reason, then, can you be asked to repose upon his statement?
104. Mr. Hill proceeds, "Barber introduced her to me as Miss Stewart - the identification paper was handed to me, and, without hesitation, I signed it." I pray you mark, gentlemen, Mr. Barber's situation at this moment. He had been in correspondence with Mr. Strode, and Mr. Strode's solicitors, Messrs. Pickering, Smith, and Thompson - three as intelligent and respectable attorneys as are to be found in this metropolis. They had told him that they were not satisfied with his affidavit, that they had never heard of any sister that Stewart had, and that they would resist his claim to the utmost. Mr. Barber knew that in five minutes they could have inspected the certificates at the Prerogative Office, that inquiries at

Southampton-terrace might easily be made as to Miss Stewart, and, as a shrewd man, he must have had every reason to believe that such inquiries would be made. If guilty, he could not hope that the fraud would escape undetected. Do you believe, then, had he known that the pretended Miss Stewart was no other than Mrs. Richards, that he would have dared in person to have attended that female to the Bank? - to have vouched to Mr. Hill, a most respectable stockbroker, to his own identity, and to have signed his own name to the identification paper? If you can believe this, any further reasoning on my part will be vain, and the ordinary rules of human conduct can be no guide to you in your inquiry.

105. It seems as if Mr. Barber had said to Pickering and Company - I have done all that you could reasonably expect me to do, to remove your doubts - you are still sceptical, but, for your scepticism I have no respect. To show how little I regard your opposition in broad daylight, I have taken Miss Stewart to the Bank, I have vouched for her identity - there is my signature, she has obtained the money. I defy reason to give such conduct the air or character of guilt. Again, according to Mr. Beeton's evidence, who was called to produce the transfer book, Mr. Barber gave instructions for the sale of Stewart's stock. They admit that Barber received no portion of that stock, and they must admit that his appearance at all in the transfer was perfectly unnecessary, and exhibiting only the courtesy of an attorney to his client.
106. Mr. Hill states that both Mrs. Dorey, and Mrs. Saunders [sic] have been shown to him, and he is quite certain that neither of them is the person whom Barber accompanied on that occasion. He then goes on to the statements of his overpayment of £3 3s 9d to Mr. Barber, and proves that Barber referred him to Elizabeth Stewart - upon these points I have said enough already. I close my observations upon Mr. Hill's evidence by repeating that every excuse which he can urge to justify his conduct in this affair, Mr. Barber can urge with tenfold force, inasmuch as Barber's transactions with Hill were "few and far between," those with Fletcher were frequent, and calculated to inspire him with a belief in his respectability. Mr. HARDING, the cashier, Mr. TILLOTSON, a clerk in the drawing office, Mr. FRANCIS HILLARY, Mr. JOSEPH DERMER, Mr. WILLIAM [20] PALMER ORD, - all merely go to prove the payment of the money, and the manner in which it was paid. Upon their testimony I will only observe, that the payment of a large portion of the amount in gold seems to have excited very little observation, and you will come therefore, be justified in the belief that it was an ordinary transaction.
107. Mr. STRODE, although the master of Stewart, and who rewards the industry of a faithful servant by a monument, paid out of his own wages, seems to know little or nothing of his gardener's pedigree. He admits that Mr. Barber addressed him by letter in his own name - rather inconsistent, I think, with the story that Mr. Hyatt tells of his having given the name of "Clarence Peckham, Esq.," Mr. Strobe living in the same house as Mr. Hyatt, and one of the parties from whom inquiries have been made as to Stewart's history.
108. Mr. Edward Thompson tells you that an application was made to him by Barber respecting Stewart's property, and that Mr. Barber announced to him that he applied on behalf of Stewart's sister - that Mr. Barber told him that she was a very old person from America - that he asked to see the sister. Surely his curiosity might soon have been gratified, Barber having furnished her address, and a cab would have conveyed him to the object of his suspicions in quarter of an hour. She was old, sick, and infirm, as has been proved by more

witnesses than one. It would, therefore, seem much more reasonable to Mr. Barber that what he thought unreasonable suspicion should satisfy itself, then that a feeble old lady should be dragged from her home to meet the requirements of caprice.

109. Mr. Barber produced copies of the affidavits, those copies stated that the certificates were filed with the original affidavits. Why did not Mr. Thompson inspect them? Mr. Bezant, clerk to the last witness, had two interviews with Mr. Barber, and reiterated the suspicions and misgivings of his principal, but like his principal, took no steps to dissipate his doubts. These gentlemen seemed to express some surprise that Mr. Barber did not call again, whether that surprise were just, you will determine. But, gentlemen, it turns out that a year and a half ago they were carrying on an action for the plaintiff, in which Mr. Barber was attorney for the defendant. Why not express their surprise then? It is too clear that they, like others, entertain very different views before and after accusation. Again, let me remind you that at this time Mr. Barber is applying merely for wages, supposed to be in the hands of Mr. Strode. The great fraud, as they allege, had been effected, and Barber was seeking to cherish and keep alive inquiries and suspicions, which, if guilty, he would have wished should be buried in internal oblivion.

110. Gentlemen, I will take the liberty to read to you a letter from Pickering and company, inquiring who Mr. Barber's client was.

*(Copy)*

Stone-buildings, Lincoln's-inn,

Nov. 2nd, 1840

Re Stewart, dece'd.

SIR,

In reply to your letter of the 31st ult., we beg leave to enquire who is your client, and by what right such client calls for information touching the affairs of the deceased. If your present application be on behalf of the party whom you represent as being a sister of the deceased, we have only to say, as we have before told you, that we are not satisfied that she is the sister, and as such we are not disposed to pay any more attention to it than to the applications made by other parties claiming to be next-of-kin of the deceased.

Yours, &c.,

PICKERING, SMITH, and THOMPSON.

Mr. W.H. Barber

111. Gentlemen, there can be no mistake about that letter. It expresses a determined resistance to Miss Stewart's claim, from the writer of that letter Mr Barber could anticipate no favour. Now, mark his reply, and if, when you have heard it, you can doubt the writer's innocence, my advocacy is in vain.

*(Copy)*

21, Tokenhouse-yard,

Nov. 4th, 1840.



Re Stewart, dece'd.

GENTLEMEN,

In enquiring who is my client, and by what right such client asks for information on this subject, it must surely have escaped your recollection that I took the trouble to produce for your inspection the letters of administration procured by my client, Elizabeth Stewart, the sister of the deceased, together with an affidavit in support thereof. Such an administration was not obtained until every query suggested by the registrar had been answered to his entire satisfaction. Subsequently to this, I have supported the claim of Mrs. Stewart so entirely to the satisfaction of the bank directors, as to induce them to order the transfer of stock which had stood in the deceased's name to that of my client.

With all due deference, therefore, I submit she is entitled to have her claim regarded in a very different light to that of the other applications to which your letter refers.

I submit also that she is fairly entitled to an answer to the inquiry contained in my last, without being driven to the expense and delay of a bill of discovery, or any other adverse proceeding.

Yours, &c.,

W. H. BARBER.

Messrs. Pickering, Smith and Thompson<sup>25</sup>

112. Gentlemen, Storde, as you are already aware, had been the master of Stewart. Stewart had left in his hands documents relative to his property, there can be no doubt that his memory was gratefully preserved by his surviving master, who would, by every means in his power, protect the interests of any surviving relative that he might have. He believed that the only relative was a brother.
113. It became necessary for Barber, in his professional capacity, to request the delivery of all documents, muniments, and moneys left by the deceased, at the time of his application he tells him on whose behalf he writes - that of a sister, he describes that sister - he courts inquiry in every way - he states why he discontinued his correspondence with Pickering, Smith, and Thompson - he states as a reason that he does not choose that his client shall be involved in a chancery suit, nor be led into any unnecessary litigation - he avows that he has procured letters of administration, and obtained the money, 'twas a bold thing to do this, but how much bolder to announce to his antagonist that he had done so? He says in effect, you doubt that she is a sister of the deceased, but I have satisfied the people at the Bank that she is, openly I have done this, and, what is more, she has got the money. Was that the daring of a wicked man? - was that the conduct of one whose life stood, as it were, trembling in the balance? - of one who, in the meridian of his existence, by one inquiry, might have been dashed down to perdition? - or was it the honest exultation of one who believed that, despite the opposition of those whom he thought unreasonable men, he had achieved for his client her just rights?
114. I pass over HARDY, WITHERSPOON, LOCKHART, GUDGE, GENN and BURN, as they do not even hint at Barber. Come we now to the evidence of GRIFFIN - evidence I

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<sup>25</sup> There are some slight (immaterial) differences between these two letters, published with the speech of Serjeant Wilkins, and what is seen in the Old Bailey trial transcript.

call it because the law so describes it, but surely it is testimony open to the greatest suspicion, and tainted by the meanest motives of human conduct, but is it not a singular thing, if Barber had guiltily participated in this forgery, that he should be unknown to Griffin? - that at all the previous transactions in which Griffin participated Barber never appears? - that only upon one occasion does he see Mr. Barber engaged in furthering the business, and that after all the machinery had been completed? But there is another fact, that this man speaks to, strongly in favour of Barber's innocence - long after the transaction, repeated communications from the Stamp-office that the duty was not paid. Is that true? I have no doubt that it is. What do I infer from this? Two things - first, that Barber was a needy man, that he availed himself of that indulgence and delay allowed by government offices in payment of these duties. The money is not pressed for sometimes for eighteen months or two years. To a man of small means, such forbearance is of great importance, but had this been a guilty transaction, depend on it the duties would have been paid upon the instant. Delay would, in all probability, provoke inquiry, and very likely lead to legal proceedings. What that would lead to a guilty man's fears would easily suggest.

115. Griffin says that he went to Mrs. Dorey and told her that the duty was not paid, and that Mrs. Dorey told him to go to the attorney who had the business in hand. Would she have so described Mr. Barber, had he been their companion in guilt? Oh, no, guilt levels all distinctions, and speaks of its companions in terms of the coarsest familiarity. There can be no doubt, therefore, that Barber was treated throughout as an attorney, and spoken of in terms of distance and respect.
116. I seek not to increase Mrs. Dorey's troubles, no one could look on her wasted form and careworn face, without entertaining for her feelings of deep commiseration. [21] I know not whether she may have been guilty - whether the weakness of her sex had been acted upon, and she made the tool of others, but if Griffin's story be true, it is clear that she spoke of him in terms that would show no community of purpose or design with her and her co-mates. She would not in that case have said, "Go to my solicitor." Had Barber been jointly concerned with these parties in the guilty transaction, what would have been her language? Would she not have said, "Go to Barber, and urge him for all our sakes to pay this without a moment's delay?"
117. To Griffin, had Barber been cognizant of his previous conduct, there could be no necessity for her to speak of him in any other capacity than that of a partner in crime, and the fact of her describing him as a solicitor to Griffin is very strong proof presumptive, coupled with the fact of Griffin's never having seen him in the transaction, that he took no other part in the business than that of a solicitor. But, what is the conduct of Griffin on his reaching Mr. Barber's office? Does he presume to approach Mr. Barber as a fellow criminal? Does he address him in the language of familiarity or acquaintanceship? No such thing. He meets Mr. Barber coming out of his office, he apprises him that the duty is not paid, and in reply is told by Barber, that all will be made right, and requested, should any further application be made to him, that the applicant should be referred to Barber and Bircham's office.
118. Mr. POTTS is the next witness in order, and he stated to you upon his oath, that when Mr. Barber first appeared in the affair, that everything had been so ordered and arranged, that the case had assumed so fair and business like and appearance, that, in his opinion, no

professional man in England would have hesitated to have acted as Barber did, that the whole proceeding appeared to him, Potts, to use his own language, “most ordinary.”

119. Mr. EDWARD PARKER WOOLF is next called to put in the statement of Mrs. Dorey. That statement, gentlemen, if you pay a due observance to the oath which you have taken, can affect no one but herself. Justice refuses to be guided in her inquiries after truth by statements running from the fears, or suggested by the hopes of the guilty.
120. But even supposing for a moment that her confession, as it is termed, were allowed to influence your decisions with regard to Barber, you will find that his name is mentioned but once by her from the beginning of her story to the end. She says, that when some difficulties were suggested to Fletcher, he said that, “after preliminaries had been arranged he and Barber would manage all the rest.” What does that expression mean? why, obviously nothing more than this - “We have put everything in a right train, we have procured the necessary affidavits, we have forged and executed the bond, we have found sureties for the fulfilment of that bond - in short, everything has been done to deceive the proctor and the parties at the Bank to complete our purpose, we must have the assistance of some attorney, we have so arranged matters that no attorney upon earth will suspect us, and with Barber’s professional aid and skill I will manage the rest.” That seems, to me, to be the fair and just interpretation of the expression, especially when you find Mrs. Dorey admitting her participation in the affair, and never hinting at the countenance or sanction of Barber to any one guilty act.
121. CHRISTMAS tells you that he was in possession of some knowledge of the unclaimed dividends, and that he had furnished Fletcher with information respecting the claim of Stewart, but he never saw Barber in his life.
122. I regret that my learned friend should have deemed it necessary to have called the Lord Mayor, as, by so doing, they would seem to render the denial of any improper interference on his part with Mrs. Dorey necessary. Notwithstanding the gross and virulent attacks made upon me by some portions of the press, from motives which I will not stop here to scan, for my conduct in defence of Mrs. Dorey before the Lord Mayor, I believe I succeeded in convincing his Lordship that, relying upon the instructions I had received on that occasion, I could not well have done otherwise - [Here the Lord Mayor expressed his assent.] - I very soon ascertained that by those instructions I had been misled, and my first care was, by the amplest apology, to endeavour in some measure to atone for the wrong I had done. I have never ceased to regret it to this moment. And, gentlemen, be assured of this, that the bitterest things that the meanest hate can urge against me can never equal my own self reproaches when left to meditation after having been betrayed into injustice to others.
123. Gentlemen, I believe I have now gone through the whole of the evidence, I have but few observations to make before I proceed to call such evidence as our opponents have left us in behalf of my client. Many defects and omissions must have been apparent to eyes critical, in my attempt to reply to the charge on the [23] part of the prosecution. To no one will those defects be more apparent than to the learned judge, whose arduous duty it will be, by and by, to sum up this case to you, and who I am sure, will feel it to be a part of his duty to supply argument where I have failed, especially when he takes into account the immense

disadvantage under which I labour, opposed as I am by all that can make a prosecution formidable in talent and resources.

124. Gentlemen, I have no claim upon your sympathy, I ask it for him (pointing to the prisoner), and paradoxical as it may appear to some, I think it will be intelligible to you my strong belief in my client's innocence enhances the difficulty of the defence, because it leads me to the dread that any adverse conclusion in your minds can result only from indiscretion or omission on my part, and that fearful apprehension almost paralyses my judgment.
125. Gentlemen, what is the whole case left against Barber? Presuming that you are or will be convinced that Hyatt is mistaken as to the time of Barber's visit to Marlow - presuming that to be so - then, I defy the learned Attorney-General, with all the assistance that his juniors can give him, to adduce one tittle of evidence to show that Barber was a party to this transaction until long after the bond had been executed. If they fail in that, as far as he is concerned, there is an end of the case.
126. He is indicted as a principal in some counts, and as an accessory before the fact in others. If he took no part in the transaction until after that bond had been forged, then is he neither an accessory before the fact nor a principal.
127. Fletcher is the party who goes down to Marlow in May. Fletcher takes the lodgings for Mrs. Richards. Fletcher takes her to the proctor, Fletcher gives the instructions and pays the proctor's fees, from Fletcher's instructions the affidavits and bonds are made and executed, by Fletcher the certificates are procured, letters of administration are obtained, the clerk of session is written to, all this, as far as the evidence goes, is done before Barber takes any part in the matter, and when he does appear, Potts upon oath states, that in every single transaction he behaved as a [sic] honest solicitor.
128. Once grant me that Barber does not visit Marlow until October, - and this fact seems to me already established by Hyatt's bill, - but I will prove it by direct testimony beyond the possibility of doubt, I say, once grant me this, and you must acquit my client.
129. This story about Clarence Peckham, about Mr. Jones, about the substitution of some other person for Mrs. Richards, the payment in gold of a large portion of the money, - these and other difficulties raised by the Attorney-General, I hope I have succeeded in answering. Let me now call your attention to those facts and circumstances which have been sedulously kept from your view by those who seem to have brought themselves to believe that the end and aim of this prosecution should be to destroy Barber. Already out of the mouth of the witnesses for the prosecution have I shown that Barber's character is of the highest order. You have heard the nature of his pursuits, and those who know anything of the ennobling and sanctifying influence of science, will, I am persuaded, allow those pursuits their just influence upon his mind.
130. Gentlemen, you are aware - you must be, from the manner in which this case has been laid before you on the part of the Crown, that every inquiry that suspicion could prompt - every search that vigilance and experience could suggest - every effort of which zeal is capable, have been made to ascertain and investigate the history of Mr. Barber. And has it not struck

you as the most extraordinary admission on the part of the accusers, that they have not shown by evidence, or even suggested the inference, that Barber was ever the intimate of Fletcher in his life. He was never seen in company with Fletcher, except in a professional capacity, and I dare them to the proof of any intercourse that would justify any reasonable being in the belief that anything like friendship or intimacy subsisted between them. This could not have been the case, had they been leagued together by that strong bond by which interest binds the wicked. Sharers in guilt are drawn together by their mutual fears and contrivings, and are driven to each other for countenance and refuge from the condemnation of the world. It is true that Fletcher was a client, and came to Mr. Barber's office with everything that could recommend him to a young attorney, character, standing, and wealth, all calculated to lull suspicion, and to provoke a desire to retain his countenance and support? [sic] As a good client he was respected, and I shall be able to show to you was treated in Mr. Barber's office with a feeling bordering upon reverence.

131. Before leaving this part of my case, let me again remind you of a most important fact, that it is admitted on the other side that Mr. Barber received no more than a moderate remuneration for his services. At this moment he stands before you - penniless and forsaken - to answer a charge, in itself formidable, but [24] rendered terrible by the consummate skill with which it has been urged and enforced. Weak, he is called upon to resist the strong, palsied with apprehension, to answer the arguments and subtleties of the highest understanding, without sword or buckler, to parry the thrusts and ward off the attack of the armed and powerful. Notwithstanding this, strong in his consciousness of innocence, sustained by the strength of truth, he asks no favour, he makes no appeal to your pity (but who can withhold it?), he demands justice. He calls upon you to vindicate your love of righteousness, he implores you to admit no light into the chambers of your mind but the calm and steady light of reason. By that light read every line of the evidence, every argument of counsel and judge, do this and we fear not the result. We fear nothing but prejudice and passion. Oh! how many men for prejudice will sacrifice the earnings of long labour and privation? - how far nobler the sacrifice of prejudice itself! There is no offering unacceptable to heaven - more beneficial to the world - more honouring to oneself - than that of prejudice to truth, of selfishness to justice.
132. I call upon you to make that sacrifice today, to give a verdict that you may dwell on with pleasure in the evening of your life, and when in the course of nature you yourselves shall be approaching that judgment which must confirm your eternal destiny, it may furnish to you some consolation, and minister some courage, that you have been instrumental in binding up a broken heart, and rescuing from shame and sorrow a persecuted, but innocent, man. Gentlemen, turn your eyes there (pointing to the prisoner), you behold one who but yesterday shared largely in the honours and caresses of the world - now despised and rejected, met with shame where adulation welcomed his approach, repulsed by scorn, by those whom he scorned, in the spring of his existence, those who loved and honoured him, anticipated, with fond delight, the summer that should ripen the fruits of a glorious autumn. Bitter disappointment! Whatever your verdict may be, gentlemen, those hopes can never be realised, the buds of spring have been nipped by a ruthless hand, and all that he can now look forward to is a long and chilling winter, the dreariness and fruitlessness of which can only be cheered by the kindness and help of those whose support and smile encouraged him in the dawn of life. [Ends]

## Appendix 10 Prosecution closing speech in *Stewart*

### Closing Speech of the Attorney-General in *Stewart*<sup>26</sup>

1. The ATTORNEY-GENERAL then rose and said, that he trusted no injustice would be done to the prisoners by the few remarks he felt it his duty to make in reply to the evidence given for the defence; those remarks would not be many; for if it were necessary that he should go over the ground again - that he should labour once more through the whole case to the jury, he did not think that the prisoners ought to be convicted.
2. A great deal had been said by Mr. Wilkins which had nothing whatever to do with the case; a greater portion of his opening remarks were wholly beside the question which the jury had to decide, particularly those which related to his (the Attorney-Generals) right, on behalf of the Crown, to a reply. He had, on all occasions, when he deemed it necessary for the full administration of justice, exercised that right, and should be prepared to vindicate that course at any time hereafter. But that was beside the question. Mr. Wilkins must have known that his observations could have no force whatever in the present case. As it was intended to call witnesses for the defence, he had, therefore, a right to reply in common with any of his learned friends who might represent the humblest individual in the land. If any person could with a show of propriety complain of such a right, it would be Mr. Greaves or Mr. James, who had called no witnesses for their clients.
3. A complaint had been made by Mr. Wilkins that his client had not been permitted to have a separate trial; that complaint had been reiterated by Mr. Greaves for his client, and it appeared as if he (the Attorney-General) was required to point out the reasons why he refused to permit such a course. He asserted that this was a case which particularly required that all the persons implicated in the charge should be put upon their trial at the same time. He distinctly and emphatically stated it to be his opinion, that there never was a case which more demanded that such a decision should be adhered to. That a most serious offence had been committed by some one no one could for an instant doubt; and by whom was it committed if not by the prisoners? And yet each counsel, as they successively addressed the Court for their different clients, exonerated them from any blame for the part they had separately taken in the transaction.
4. His learned friend Mr. James said that Mrs. Dorey had been imposed upon by Mr. Fletcher. Mr. Greaves said that Fletcher had been imposed upon by Mrs. Richards, who was dead; and Mr. Wilkins said that Mr. Barber had been imposed upon by all the other parties. He hoped that he not only took a legal but also a common-sense view of the matter, when he stated that where a number of persons had been combining together for the purpose of practising a fraud, the whole case should be investigated at once, and not that the Court should be subjected to such a mockery as a trial of one of the parties one day, who would say he had been innocently imposed upon by some of the others, and then have the same farce practised by each of the others afterwards.
5. It must, unquestionably, be the best way of arriving at the truth to hear the whole case together, and then say which, if any, of the parties were to be believed on their statements.

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<sup>26</sup> *The Times* (1844) 'The Will Forgeries' 13 April.

He considered it most essential for the administration of justice to have the whole evidence laid before the jury at the same time; and, agreeing as he did with the learned counsel for Mr. Barber in eulogising a jury is one of the most sacred institutions of their country, he should consider it but a mere complication of useless machinery, if the gentlemen then composing it, with their intelligence and with their knowledge of the world, were not competent to discriminate and separate the different parts applicable to each of the prisoners. If, after taking the whole matter into consideration, it should lead them to acquit one or all of the prisoners, let justice be done; if, however, it had not been made out to their satisfaction that the parts they had taken in the transaction were innocent ones, he would call upon them fearlessly to perform their duty.

6. He heard his learned friend's animated address to the jury, claiming an acquittal for Mrs. Dory [sic] on the ground that she was a mere tool in the hands of Fletcher, and therefore not understanding at the time that she was committing a criminal offence, she ought not to be deemed guilty. He agreed with his learned friend in his view of the law, that the act itself could not be considered criminal unless done with a criminal intent; that was the language of justice, it was the language of common sense, but did it apply to her case?
7. Look at her admissions as to the part she had taken in former transactions, had she not admitted that she put her name to a bond, for which she received £50 from Fletcher? At that time she was not a young and inexperienced person, she could not plead ignorance of the common business of life, and therefore must have known that she was doing that which was improper, which was unlawful. Had she not, moreover, been concerned in the fraud of passing off her mother as Miss Stewart, and being in the habit day after day of going to see her as her niece, when she was in point of fact her daughter, and this, too, done with the view of getting money out of the Bank of England.
8. She had admitted having heard a conversation for the purpose of getting an affidavit [sic?] to personate a dead person, and that Fletcher had told her he had exhausted all his means for such a purpose, and that he required a person so discreet in roguery as he could safely rely upon; that she had accordingly been instrumental in procuring the services of Griffin, and had taken him £10 for the part that he acted in becoming one of the sureties; her mother had received for this affair no lesser sum than £400 or £500, of which fact she was fully aware.
9. With these facts admitted by the prisoner, it was for the jury to say whether they could believe that her notions of morality could have been so imposed upon, and that she was, as asserted by his learned friend, the tool of the bad man Fletcher, or whether they were not satisfied she was a willing agent of his? As men of sense they were the proper parties to judge between the two suppositions.
10. With regard to the case of Fletcher it would not be necessary for him to go through the whole of the evidence as tending to inculcate him, as the learned judge in his summing up would, in all probability, feel it his duty to do that; he should, therefore, confine his observations to those portions which he relied upon as fixing him with a guilty knowledge of this fraudulent transaction.

11. To begin, therefore, with his earliest appearance in the business, they would find him informing the prisoner Dorey that he had obtained information which enabled him to get money from the Bank; that person was undoubtedly Mr. Christmas, and Fletcher had paid him £50 or £100 for his services. They next found Fletcher working-up and using that information, respecting the unclaimed dividends of John Stewart; and, although Mr. Christmas had unquestionably been guilty of a gross dereliction of duty, he thought the jury would agree with him, that he could hardly be called an accomplice of Fletcher's, as the learned counsel for the prisoner contended that he ought.
12. The Bank of England wisely determined to lock up all information respecting the unclaimed dividends from the public, well knowing that the parties really entitled to them could get such information quite soon enough, and that if such knowledge could be readily obtained it would be encouraging all those who had dishonest motives to make use of it. He therefore said it would be ridiculous to arraign Mr. Christmas with the prisoners at the bar, for he might at the time have believed he was giving information to the right parties, who in many instances would be glad enough to pay for it.
13. They next traced Fletcher to Marlow, under the assumed name of Jones, making inquiries respecting John Stewart. The next link in the chain of evidence which he should call their attention to was his connexion with the old lady, Miss Stewart, or rather Mrs. Richards. He would ask them whether they were not well satisfied that she was the mother of the prisoner Dorey, living under a feigned name?
14. He did not know whether this part of the case affected Barber so much as it did Fletcher. Well, this old lady went to Doctors'-commons and made the usual affidavit. Mr. Wilkins had assured them that the whole business was an ordinary one, and was conducted in the usual way, whereas the witnesses had expressly deposed the other way; Difficulties had arisen in the progress of the matter, and it was then that Mr. Barber, who had been described as a shrewd, clever man, came to extricate and wind up the affair.
15. They first get the stock transferred, then obtain the dividends, and lastly sell the stock, and yet during the whole of these transactions Mrs. Richards had not been heard to utter one syllable. Could there have been a more apt instrument for such a purpose? She was a perfect piece of mechanism, a living automaton, she gave no instructions whatever.
16. Mr. James, feeling no doubt a powerful interest in favour of his client, broke out into observations which it would ill become him to comment upon; his remarks were true from the evidence as given, and confined closely to it. There was not one tittle of evidence to prove that she ever even answered proctor or clerk, that she ever opened her mouth to the broker. She was, in fact, only an animated statue, brought down to write its name.
17. Now this was extremely important, both as affected Barber and Fletcher. Mrs. Richards was dead, but what had become of Miss Stewart? Why did they not produce her if they were not one and the same person? For if the case raised on behalf of Fletcher was true, although Mrs. Richards were dead, Miss Stewart might be living; but his learned friends had not attempted to make much point [sic?] that this old lady was not the mother of Mrs. Dorey, nor did he see how well they could, for had they not an accurate description given by the



witnesses of her person tallying in every respect with her? Did not the servant speak with certainty to the identification of her gown, a matter which that class of persons had as much recollection of as a farmer had of the last year's proceeds of his farm?

18. The money was at length obtained, and the jury would have seriously to consider and say, whether Fletcher did not in the first instance obtain information from the Bank by means of a bribe? – whether he did not then look out for a convenient person whom he might pass off as the sister of John Stewart? whether he did not go to Marlow, and on his return state that he had obtained the necessary information - and, whether he did not afterwards take lodgings for the person who was to personate Miss Stewart, to whom none but the Fletchers ever had access?
19. Mr. Greaves had stated that criminal cases ought to be conducted in the same way as all others for the investigation of truth, but he (the Attorney-General) must say, that if a man lost his watch in a crowd which was afterwards found in the possession of another person in that crowd, it was incumbent upon that person to show that he came honestly by it; and it was evidence to go to a jury to say, whether he had made that out satisfactorily or not.
20. Was it probable that, after Fletcher had obtained a large sum of money, some hundreds of pounds, the woman Stewart could disappear without its being known what became of her? Fletcher was bound to give an explanation of the disappearance of that woman to establish his innocence. If Mr. Fletcher was the honourable and respectable man he was represented to be, surely he could explain where he became acquainted with this woman, Miss Stewart, how he was introduced to her, and what became of her. It would be the duty of the jury to consider whether Fletcher had not obtained some woman to personate the sister of John Stewart, and to forge a bond, whereby she obtained possession of this stock. He thought it had been clearly proved that the woman who was guilty of this personation was Mrs. Richards, the mother of the female prisoner.
21. He had now to make a few remarks as to the case of Barber, who, as they were aware, was a solicitor. He was not disposed to endeavour to weaken the force of the evidence as to character which had been adduced on the part of Barber; but he was surprised that, among the witnesses called today, they did not find a single gentleman who said, “I am the friend of Mr. Barber; I have lived upon terms of intimacy with him; he is not married, but he visited me.” This only was the sort of intimacy which could enable witnesses to speak as to a man's real character; although the evidence of persons who deposed to meeting an individual at a literary institution, and seeing him frequently transact business, without knowing him accused of any crime, or witnessing any misconduct, might weigh in some measure in a man's favour.
22. Barber was a member of an honourable profession - a profession in which the public reposed the greatest confidence; and it was most essential to the well-being of society that that profession should deserve the confidence which of necessity was reposed in it. No circumstances, he conceived, would be more injurious to the general prosperity of society than any law, any revolution which had a tendency to degrade that profession. To members of that profession were confided, without the slightest reserve, deeds and documents of every description, and of the highest value and importance. He had himself executed many

deeds not one syllable of which he had read, and it was by no means uncommon for the same implicit confidence to be reposed in the profession to which he referred.

23. It was for the jury to judge, after the evidence which had been adduced, whether they could acquit Barber of a guilty knowledge of these transactions. He thought it was ridiculous for his learned friend Mr. Wilkins to contend that the witness Hyatt had understood Barber to state that his name was "Clarence Peckham, Esq.," while the words he used were "My clerk, Peckham." He was surprised that his learned friend should have made so feeble an attempt to explain the circumstance.
24. It was admitted that Barber had visited Great Marlow to make inquiries; but Mr. Wilkins contended that the visit took place in October, and not in May or June; and he produced a tavern-bill dated October, the items in which corresponded with the refreshment stated have been supplied to Barber on the occasion of his visit in May. He (the Attorney-General) fully expected to have seen that bill headed with the prisoner's real name - William Henry Barber - but that was not the case. The witness Hyatt said, he did not know whether that bill related to Barber at all or not; but that certainly it did not relate to the visit paid by Barber to Marlow three weeks after Fletcher, under the name of Jones, had been there making inquiries.
25. He (the Attorney-General) had, at least, expected that his learned friend would have proved that Barber was at Great Marlow in October, 1840; but even that he had not done. He thought it might, therefore, be very reasonably supposed that this was a bill furnished to some other person. He had, at first, entertained some doubt whether the date on this bill was not 1841, but, on close inspection, he believed it to be 1840; at all events he gave the prisoner the benefit of the doubt.
26. It appeared to him singular that the clerk, Robert Peckham, should be able to state so decidedly that Barber was never absent from home, from one day to another, during the time he was supposed to have gone to Marlow, while the witness could not tell them whether he (Barber) was at home on the 13th of October.<sup>27</sup> It appeared that Mr. Barber had kept a book of attendance, by which the clerks could tell when he was absent; and his friend Mr. Wilkins, who was one of the most skilful and one of the most daring counsel –
27. Mr. PARRY said, there was an entry in the diary which has learned Mr. Wilkins had offered to put in evidence.
28. Mr. Baron GURNEY said it could not be tendered now.
29. The ATTORNEY-GENERAL said, it was extraordinary that the person called to prove Barber's continued residence at home was unable to prove whether or not he was absent on 13th of October. He did not place any reliance upon an entry in a book in Barber's handwriting, but he would place reliance upon a statement of the clerk. It was for the jury to determine whether they believed that Barber's visit to Marlow was in May or October, -

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<sup>27</sup> An error? OB1 has Peckham saying: 'I remember Mr. Barber going to Great Marlow very well indeed. I did not go with him. I made an entry in the diary at his dictation, a day or two before he went, of his intention to go, and I know of his absence from the office on that day.'

whether Barber had given the name of “Clarence Peckham,” or whether Hyatt, who had made a memorandum at the time, could have invented this name.

30. But there was another circumstance of much importance. It was not denied, whenever the visit was paid, that the inquiries made by Clarence Peckham or Barber were precisely similar to the inquiries made by Jones. Why, in the month of October there could have been no occasion for Barber to make these inquiries, for on the 25th of June Fletcher had written a letter to great Marlow, stating that Stewart's sister had been discovered, and on the 28th of August the letters of administration were taken out. Long previous to October, therefore, the transaction was completed; and yet the jury were asked to suppose that Barber went down to Great Marlow in October to make precisely the same inquiries that had been made by Fletcher in the month of May preceding.
31. But they had traced to the possession of Barber the statement of Miss Stewart, which had been proved to be in the handwriting of one of Barber's clerks. Who dictated this document? “Why,” said the witness M'Namara, “it might be Mr. Barber, or Mr. Knight, or Peckham, or it might be the boy.”
32. The next matter against Barber was his having given notice of the information which came from Jones, and the jury should remember that the statement supposed to be the statement of the sister came from Barber. The haughty, proud, and independent Mr. Fletcher had gone down in the name of Jones to pick up what information he could about the relationship of the poor old gardener; but he would not go over all that ground.
33. After again calling the attention of the jury to the different modes of the signature of Elizabeth Stewart to the instruments at the Stamp-office, Doctors'-commons, and the Bank, and the applications made by Barber to Mr. Strode for the stock receipts, and also to his attorneys, Messrs. Pickering and Co., who expressed themselves as not being satisfied that the woman was the sister of John Stewart, the learned Attorney-General concluded by calling upon the jury to act conscientiously and impartially in the decision they were about to give. Let your conclusion, gentlemen (he said), be the conclusion of your own minds; when you have formed your conscientious, your honest, independent judgment for yourselves, as men of business, understanding the transactions of life, then let your verdict be given, whether it be for the Crown or for the prisoners, whether of *guilty*, or *not guilty*. Let your verdict be the act of firm, impartial, and just men, faithfully discharging an important duty.
34. Mr. Baron GURNEY said, this was much too important a case for him to commence summing up at that late hour of the day, and, therefore, he must retain the jury until Monday morning, when they would give their attendance as usual.
35. The jury were then conducted by Mr. Hemp, summoning officer of the sheriff, and Mr. Harker principal usher of the Court, to their quarters at the London Coffee-house.

[ends]

## Appendix 11 Prosecution opening speech in *Slack*

### Opening Speech of William Erle QC in *Slack*<sup>28</sup>

1. Mr. Erle stated the case to the Jury. The prisoners, he said, were indicted for forging and uttering a forged will, purporting to be the will of Ann Slack, and for having obtained through that instrument a certain portion of the public funds of this country. It would, in his view of the case, be more convenient to the Jury to call their attention first to the nature of the crime in question, and then to the evidence on which it would be supported. The question would in that way be cleared of all extrinsic matter, and it would only remain for the Jury to decide whether or not the evidence brought home the crime alleged in the indictment to the prisoners at the bar.
2. With respect to the first branch of the division proposed then, namely, whether the will of Ann Slack had been forged or not, he should state the circumstances of the case to the Jury in as brief a manner as possible.
3. The father of Miss Ann Slack died in 1815, leaving his property among his children. Mr. Hulme, of the House of Jones Loyd and Co, was the executor named in his will, and Miss Ann Slack was one of the legatees. His affairs, however, were not wound up until 1829; and in that year Mr. Hulme invested in the public funds, in the name of Ann Slack of Smith-street, Chelsea, spinster, a sum of £6,600 Three per Cent. Reduced Stock; and a further sum of £3,500 Three per Cent. Consols.
4. It appeared that Miss Ann Slack had reposed the utmost confidence in Mr. Hulme; She gave him her power of attorney to receive the dividends: and he accordingly received them until his death in 1832. It did not, however, appear that he rendered her any specific account of the sums so received by him; she drew on him for whatever money she wanted - probably her income was larger than her expenditure; and it was apparent that she had not received any information of the two sums mentioned as standing in her name.
5. On the death of Mr. Hulme, that power of attorney granted to him ceased, and it became necessary to renew it to another party, or that the owner of the stock should receive the dividends in person. Miss Slack, however, adopted the latter course, she resolved to receive them herself; and, accordingly, in 1832, she applied for and received the dividends due on £6,600 Three per Cent. Reduced Stock.
6. On that occasion she was not informed of the other sum of £3,500 Three per Cent. Consols, which stood in her name also; and from that period (1832) the dividends upon it remained unclaimed.
7. The Jury were aware that by a statute of George III., if the dividends upon any stock remained unclaimed for ten years, the capital sum which it represented, together with the dividends thereon, was transferred to the credit of the commissioners for the reduction of the National Debt, subject always to re-transfer, in case it was thereafter reclaimed by the owner. The dividends on this sum being unclaimed from July, 1832, to July, 1842, the

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<sup>28</sup> *Morning Post* (1844) 'The Will Forgeries: Second Case' 17 April.

transfer prescribed by the Act of Parliament took place accordingly; but the property, in pursuance of the provisions of that Act, still remained in the rightful owner, in case a claim was proved for it.

8. In March, 1843, however, a will was produced at the proper office in Doctors' Commons, and probate was obtained thereon. That document purported to be the last will and testament of Ann Slack, formerly of Smith-street, Chelsea, spinster. It ran thus:-

“I, Anne Slack, Spinster formerly of Smith-street, Chelsea but now of South-terrace Pimlico do make this my last will and testament as follows:- That is to say I give devise and bequeath unto my beloved niece Emma Slack the sum of £3,500 stock in the Three per Cent. Consolidated Annuities now standing in my name in the books of the Bank of England, and also all my money and securities for money of what nature or kind soever and wheresoever the same shall be at the time of my death. And I do appoint and constitute my said niece sole executrix of this my last will and testament hereby revoking and making void all and every other will or wills at any time heretofore made by me and do declare this to be my last will and testament. In Witness whereof, I, the said Anne Slack, have hereunto set my hand and seal this 3d day of June in the year of our Lord, 1842 – “ANNE SLACK (L.S.)”

9. It was regularly attested, and bore date the 3d of June, 1842. The probate thus obtained was lodged at the Bank of England, together with a claim for the property in question.
10. A person, calling herself Emma Slack, claimed the dividends upon that sum; and they were paid to her. The stock on which they were received was then sold out. To prove this, the first branch of his case, he (Mr. Erle) would call Miss Ann Slack, and she would state to the Jury that the handwriting in the will was not her handwriting - that she had never made any such will at all - and that, therefore, it was not a proper instrument. That will he would prove to have been tendered for probate – in legal language uttered - on the 16th of March, 1843, at Doctors' Commons, and he would prove that probate of it had been obtained on the 25th of March following. He would also prove that on the 7th of April in the same year the dividends on the £3,500 Three per Cent. Consols in question had been obtained, and the stock itself sold out.
11. Having thus far cleared the way for the second branch of the statement he had to make to the Jury, he should proceed to deal with that as shortly as he could. He presumed that the Jury were too well acquainted with their duties as Jurymen to render necessary for him to request them, in dealing with the case they had to try, to discharge from their minds all that they had heard and read on the subject, and to confine their attention entirely to the evidence that would be offered them in support of the charges. The charge was one of grave guilt against the prisoners, and the Jury would demand, as humanity and justice required they should do, that proofs offered to support it were clear and satisfactory to their consciences.
12. On the other hand, however, if the evidence that was produced on the trial left no doubt on their minds all the guilt of the prisoners, they would, doubtless, feel equally imperative upon them the importance of punishing by their verdict the perpetrators of that guilt. It

was his (Mr. Erle's) purpose to lay before them, in the order of their respective dates, all the facts that appeared to him of importance in connexion with the inquiry which they were then called to enter upon; and he should proceed to detail them succinctly, as briefly as consisted with their due explanation.

13. The prisoner Fletcher was at the time the transaction in question took place a medical man; and for a year or more previously it appeared that he had employed the other prisoner Barber in his professional character as an attorney. But he (Mr. Erle) was prepared to show the Jury that more than a year before that Barber and Fletcher were co-operating together in respect to dividends due on stock, and he should put that fact in evidence to prove that they were acquainted with one another and did business together previous to the commencement of Barber's transactions with Fletcher in his professional capacity.
14. The prisoner Georgiana Dorey was the wife of a tradesman in Oxford-street; she was also the sister of the other prisoner Lydia Sanders, the wife of the prisoner Sanders, who had been a fishmonger in Bristol. Both the female prisoners were acquainted with the prisoner Fletcher previous to their respective marriages, and while living with their mother, now dead, Mrs. Richards; and it would be shown that they were acquaintances of some years' standing.
15. The earliest point to which he (Mr. Erle) should call the attention of the Jury in respect to the inquiry then pending was in the autumn of 1843. It appeared that a clerk in the Bank of England named Christmas, had means of knowing, at that period, what stock remained unclaimed as regarded the dividends for ten years and upwards, and consequently what sums, and to whom they originally belonged, were about to be transferred to the credit of the commissioners for the reduction of the national debt. The most important point at the Bank of England, as the Jury were all doubtlessly well aware, was, on claiming dividends on any stock, to state the amount of that stock, and the name in which it was registered. That information was obtained by Christmas, the clerk, and communicated by him to Fletcher on this occasion.
16. In the autumn of 1842 Christmas informed the prisoner Fletcher that a sum of £3,500 stock in the Three per Cent. Consolidated Annuities, standing in the name of Ann Slack, of Smith-street, Chelsea, spinster, was about to be transferred to the commissioners for the reduction of the national debt, as unclaimed for a term of ten years, and Fletcher at once proceeded to make inquiries, it would be proved, respecting the Ann Slack to whom it belonged. In the course of the month of September in that year, it would be shown that he was at the railroad station of Abbots-Langley, in the county of Herts, where Miss Ann Slack resided with her sister, the wife of Captain Foskett, having left Chelsea on the death of the person with whom she lived in Smith-street since 1832.
17. On that occasion it appeared that the prisoner Fletcher saw a man named Apsley and his wife, who kept the station, and that they undertook to obtain information for him respecting Miss Ann Slack. Accordingly they communicated to him that Miss Ann Slack was residing in the house of Captain Foskett, and they suggested that he should visit at the house to satisfy himself on the subject of her identity. That, however, he declined to do. Witnesses would be called in reference to that portion of the case, who would prove that

the manner of the prisoner Fletcher on the occasion of making these inquiries had excited suspicion in the minds of the parties his informants; and it would therefore be for the Jury to say whether, under such circumstances, there could be any reasonable doubt entertained as to his identity in the transaction.

18. After the return of Fletcher to London, correspondence took place between Mr. Barber, on the part of the firm of Barber and Bircham, solicitors, and Captain Foscett, with respect to the claim of Miss Ann Slack to some property belonging to her, of which she had no knowledge. The Learned Counsel then read the following letters:- the first letter was from Barber to Captain Foscett, to the effect that he had occasion to ascertain who were the executors of the deceased Anne Slack, and to inquire as to the next relative. In that letter [sic] Captain Foscett replied that Anne Slack was his wife's sister, and was resident with him. Barber then replied – "Sir, We are obliged by your letter of the 13<sup>th</sup> instant ; but as we find an entry of the death of Anne Slack (formerly of Chelsea) at Somerset House, by which it appears she died at Bath, we feel some doubt as to the identity of the lady in question. If, therefore, it would not be giving you too much trouble, we should feel exceedingly obliged by your acquainting us whether Mrs. Foscett's sister formerly resided at Chelsea, and whether she spelt her Christian name with or without an e. We noticed in your letter you spelt her name Ann. – We remain, Sir, your obliged and obedient servants, Barber and Bircham." Captain Foscett replied that she did right her name with an e, and that she formally lived in Smith-street, Chelsea, with a family named Leake in 1830; but that she had since resided with him and her sister.
19. Captain Foscett called on Mr. Barber for information on the subject of the correspondence, but none could be obtained from him. There was afterwards a request for a further call on the prisoner Barber; and also a request on his part for the signature of Miss Anne Slack, that the property in question might be more certainly identified. This was the letter:-

"Sir – It would probably facilitate our inquiries if you could oblige us with the names of the trustees holding funded property for the benefit of Miss Ann Slack. Requesting the favour of your early attention, we remain, dear Sir, yours very obediently."
20. Barber had informed Captain Foscett that he had unusual means of information on such subjects at the Bank of England, as a motive for inducing him to accede to the latter request. Capt. Foscett upon this called on his attorney, Mr. Baxter, and upon consideration, it was resolved that the signature of Miss Ann Slack should be furnished to the prisoner Barber, for the purpose of pursuing his investigation into the property in question. That signature, however, it appeared Barber gave to the other prisoner, Fletcher, who took it to the Bank to Christmas, the clerk. It was compared by Christmas with the handwriting of Ann Slack in the Bank books, and he then informed Fletcher that the character was similar to that, but that the hand was lighter. It appeared, therefore, from this, that the prisoners, Barber and Fletcher, were in communication with each other on the subject of the stock in question.

21. On the 4th January, 1843, Barber wrote to Mr. Baxter, Captain Foskett's attorney, returning the note of Miss Ann Slack which had been enclosed to him, stating that the signature did not correspond, and that he concluded, therefore, the identity of that lady with the owner of the property in dispute could not be supported. This was the letter:-

“We beg to return Miss Slack's letter, and to state that we find the signatures do not correspond, and, consequently, we have arrived at the conclusion that the identity cannot be supported. We trust you will be good enough to consider this negotiation confidential; and, should our exertions to discover the right party prove successful, we shall not fail to communicate to you the result, for the satisfaction of the young lady and her friends.”
22. That terminated the correspondence with the family of Miss Ann Slack respecting the ownership of the £3,500 Three per Cent. Consols, standing in her name, as of Smith-street, Chelsea, spinster, on the part of the prisoner, Barber.
23. The next material fact in the case should be laid before the Jury. It appeared that on the 25th of February, 1843, the prisoner Fletcher went to the registry office, Belgrave-square, and proposed to register the death of a certain Ann Slack, of 8, South-terrace, Pimlico. The registrar, however, drew his attention to the fact that no such place as South-terrace was comprised in that district, and asked him if he meant South-place, near the Wooden-bridge. He also put some other questions to him which would be stated in the evidence, asked whether he was present at her death, and of what disease she had died. And upon the prisoner stating that she had died of the gout the registrar remarked that the gout was not usually a fatal complaint, whereupon Fletcher said she had been long a martyr to it. On the 25th of February, however, the registry was completed, and the prisoner Fletcher signed it as Robert Hart, 4, James-street, Commercial-road East. He had just stated James-street, Commercial-road; but on the suggestion of the registrar that there were two roads of that name, he stated the correction that it was Commercial-road East. In respect to this part of the case, he (Mr. Erle) might then observe that there were no such places as South-terrace or James-street in Pimlico, or in the Commercial-road East; and that no such person as Ann Slack was ever known to reside at 8, South-place, in the former part of the town, nor that Robert Hart was not [sic?] known either in all the James-streets in those neighbourhoods for years.
24. It might be, therefore, taken for granted that there was a fictitious registry of the fictitious death of Anne Slack, brought about by the prisoner Fletcher. A judge in Chancery once said that a certificate of birth did not prove that a child was born, but merely that a birth was registered; but here was a case of a certificate of a death when the person registered as dead was still alive.
25. The registrar at the time of this transaction was a stranger to Fletcher, but when he was taken to the prison, subsequent to the arrest of Fletcher, he pointed him out at once among a great number of other prisoners, and said “that is Robert Hart.”
26. On the 8th of March Barber and Bircham published in the *Times* newspaper an advertisement for the representatives of Ann Slack. It was as follows:-



“We are instructed to discover the legal personal representative of Miss Anne Slack, formerly of Chelsea, spinster, and shall be happy to afford a very liberal remuneration to any person who can communicate to us that information. – Barber and Bircham, solicitors, 28, New Bridge-street, Blackfriars.”

27. An answer to that advertisement was written by Mr. Offley, of Covent-garden, stating that such a person as Anne Slack resided it at Abbots Langley, along with her sister and brother-in-law Captain Foskett and his wife. To that answer Barber replied on the 10th of March, stating that he had had several communications on the subject with Captain Foskett, and that the lady was not the person in question.
28. On this point it would be necessary for the prisoner to explain to the Jury on whose authority he acted in the matter, and by whom he was employed to make these inquiries.
29. On the 9th of March, or thereabouts, the prisoner, Georgiana Dorey, applied at 7, Frances-street [sic], Tottenham-court-road, for lodgings, and the other prisoner, Lydia Saunders, who was disguised on the occasion, wearing false hair, but who was still susceptible of identification, was introduced to them by her sister as Miss Emma Slack, and stayed there until the 7th of April following. During her residence in these lodgings she was visited constantly by Mrs Dorey; but though she wore false fronts of a light coloured hair, and always kept her boa and bonnet on, the servant of the house discovered that she was disguised by the hair left in the hair brushes being black. That circumstance drew more particular attention to her, and her identification would be, therefore, complete.
30. At this point of time in the transaction, the prisoner, Lydia Sanders, was introduced to the prisoner Barber, and on the 16th of March, Barber, in company with her, went to a proctor named Wells [sic], and produced there a will made in the name of Anne Slack, and on this introduction of Barber, Mr. Wells proceeded at once to obtain probate of that instrument; it was according [sic] obtained.
31. Barber paid the probate duty on the will of the pretended deceased person; the property was sworn at under £5,000. He (Mr. Erle) drew the attention of the Jury to that fact, because it showed that although Barber had conducted the protracted inquiry alluded to, in 1842, under the name of Anne Slack, no inquiry was made on this occasion. The sum in question constituted the whole fortune of the person professing to bequeath it, who was represented as deceased; and yet it was seen that the dividends remained unclaimed for a period of ten years to February, 1842. but the prisoner, Barber, knew that these dividends were unclaimed, as he (Mr. Erle) would prove by a letter which he should produce. It was in the handwriting of that prisoner, although written in the name of Emma Slack, and related to the re-transfer of the stock in question:-

“TO THE GOVERNOR OF THE BANK OF ENGLAND.

“Sir – There was lately standing in the name of Anne Slack, of Chelsea, spinster, the sum of £3,500 in the Three per Cent. Consolidated Bank Annuities. From the period which has elapsed since any dividends have been received, it is possible that

the amount may have been carried to the Commissioners for the Reduction of the National Debt. My aunt died on the 17th day of February last, leaving me her sole legatee and executrix. I have since proved the will, the probate of which has been duly lodged in the will office of the bank, and I shall therefore be glad to have the stock in question transferred into my own name. Dated this 24th day of March, 1843.

“EMMA SLACK, sole legatee and executrix

of the deceased Anne Slack,

“No. 7, Francis-street, Tottenham-court-road.”

32. The Jury would find, further, that Barber went with Emma Slack to a broker named Philpotts, in the Stock Exchange, and introduced her to him as a party desirous of selling some stock; and that he went with her and this broker to the Dividend-office at the Bank, where she received the accumulated dividends of ten years, namely £1,100.
33. They would also find that Barber had written on the back of the dividend-warrant obtained by her the nature of the moneys which she was to receive, viz., gold, £600, four one hundred pound notes, and the remainder in smaller notes. On the receipt of this sum Barber and the person passing as Emma Slack, who had left Mr. Philpotts to get it, returned to where he was; and it appeared that the sum of £600 in gold was paid to the man who accompanied the said Emma Slack.
34. She then gave directions to Mr. Philpotts to sell £3,500 stock Three per Cent. Consols. Fletcher had been to Mr. Philpotts in the morning to state that a client of Barber's would employ him in the course of the day to sell some stock – say £3,000 or £4,000; and when Barber and Emma Slack returned to Mr. Philpotts after receiving the dividend, Fletcher was along with him. Mr. Philpotts acting under these directions, sold the stock in question, and they received from him as the price of it, three one thousand pound notes, and the difference in cash. These were handed over to Fletcher and Barber; and it was at once decided that one of them should be immediately cashed in gold. The whole of the accumulated dividends and stock being thus obtained the party left.
35. Emma Slack, however, returned no more to her lodgings; but on the 9<sup>th</sup> of April it would be proved that she was that she was in Mrs. Dorey's house, and that after having exhibited a £1,000 note in the shop as a curiosity, she went out and returned shortly after with a large heavy bag, which appeared to be gold. Having bought some articles in the shop she then left for Bristol.
36. It would appear in the evidence that should be laid before the Jury that the prisoner Sanders had brought his wife to London from Bristol in February, and that she had returned to him in April. On her return she brought with her £1,000 in gold, which sum was lodged by him at his bankers, in Bristol. That fact closed the matter until the month of April, 1843.

37. It appeared that after this period the attention of the Bank of England had been called to the nature of the will by which the stock and dividends in question had been obtained, by the circumstance of a lady wanting to purchase in the same name and same stock – the Three per Cent Consols. The rule of the Bank on such occasions, was that no more stock should be entered in the same name as a person previously returned as dead, until inquiry had been instituted into the circumstances.
38. These inquiries were made, and there resulted in the discovery that the will was a forged will. Mr. Freshfield, the solicitor to the Bank, called upon the prisoner Barber in relation to the fact; and pointed his attention to the circumstances connected with it. But Barber only said that it was a transaction in the regular course of business, and that Emma Slack was a respectable woman who lived in Holborn. Mr. Freshfield, however, suggested that this could not be the case, as Barber had been making inquiries in 1842. This point he (Mr. Erle) would leave to be elicited in Mr. Freshfield's evidence.
39. The question the Jury had to try, was whether or not Barber had a guilty knowledge of the forgery. Mr. Freshfield then requested Barber to state if Emma Slack [sic] was known to him as he described, whether he had any objection to state who introduced her to him in the way of business? Fletcher had, it was now known, introduced her to him, and he was known to Barber for years. His name, therefore, could not be forgotten by Barber when that inquiry was made of him; and yet, notwithstanding the facts, it was withheld from Mr. Freshfield. Mr. Freshfield said on that occasion to Barber, that he was gravely implicated in the transaction; but still he withheld the name of Fletcher.
40. Barber was then apprehended on the charge, and taken for examination before the Lord Mayor. The Lord Mayor decided to commit him at once without taking bail; upon which Barber consulted for an hour with Fletcher, who was then in the justice-room, and Mr. Bircham his partner, and the result of that consultation, was the decision of the prisoner to call Fletcher as a witness. Fletcher then appeared for the first time in the transaction, in connexion with Barber.
41. These facts he (Mr. Erle) called the attention of the Jury to, as by them would be regulated the issue they had to try.
42. With respect to the prisoner, Lydia Sanders, if it should be established to the satisfaction of the Jury that she obtained £5,000 through the agency of a false will, then there could be no doubt of her guilt.
43. With regard to Fletcher, considering the part he had taken in obtaining a false register, and subsequently in obtaining that money, it would be for the Jury to decide the amount of his guilt or innocence in the matter.
44. And with respect to Barber, there could be no doubt that he had attended with the fictitious Emma Slack, and by means of a forged will uttered by her, assisted in obtaining that money. The sole question for the Jury to try would be, as regarded Barber, the amount of guilty knowledge he had of the transaction, or whether he was innocent of all guilt.

45. The stock would be identified as the property of Anne [sic] Slack, of South [sic] street, Chelsea, and it would be for the Jury to state whether any doubt could arise about the ownership, when a person in every respect answering the description of the proprietor was still in existence.
46. The Jury would also attend to the circumstances under which the claim for that stock, and the dividends accruing on it, had been brought forward by the parties on trial.
47. They would consider the habits of life of Barber, a solicitor of character in his profession, and a man of great shrewdness.
48. They would also bear in mind that Lydia Sanders, who he professed to be a perfect stranger to, had been brought forward, and had obtained on his sole recommendation that money.
49. The manner in which the will had been produced, and the money obtained, would become also a question for the consideration of the Jury; and they would have to say whether or not, with all these facts before them, Barber could be otherwise than cognizant of the crime imputed to the parties.
50. If there was a reasonable doubt on their minds of the guilt of the parties, or any of them, those engaged for the prosecution would have equal satisfaction with those engaged for the prisoners should the Jury come to a merciful decision in their case. But if, on the contrary, there appeared a ground to doubt it, then he was quite sure that they needed no incentive from him to the due discharge of their duty.

[Ends]

## Appendix 12 Wilkins Speech for the Defence in *Slack, The Times*

### Speech of Mr Wilkins from *The Times*<sup>29</sup>

1. Mr. Wilkins then rose to address the jury on behalf of the prisoner Barber. The learned gentleman said he would fain believe that the many spectators who had thronged the court throughout this protracted trial, had been actuated by a higher and better motive than that of mere curiosity; and he hoped they had learned from the proceedings some most important lessons, not the least of which, he imagined, would be that of duly appreciating the privileges which, as British subjects, they enjoyed under British laws.
2. He (Mr. Wilkins) had seen, in the course of this investigation, the truth of the declaration of the great essayist, that how much so ever we may prize our institutions; with how much admiration soever we may regard the towering and noble institutions of the land in which we live, from palace to the cottage, from the throne to the coronet, and downwards through the various gradations of society, we discover that they all point to the jury-box.
3. He would, in the first place, go through the statement of his learned friend, Mr. Erle, who had opened the case for the prosecution; he would then direct the attention of the jury to the evidence which had been adduced; and he would conclude with such observations as he conceived were justified by that evidence.
4. The opening address of the learned gentleman - a gentleman of great ability, and of extensive experience - was a plain unvarnished statement. A learned personage (the late Attorney-General), whose conduct and example would be cherished in the recollection of every member of the British bar, had said the other day in that court that he would not lay by for his reply, and that he would not suppress any facts with a view to the prejudice or conviction of the prisoners.
5. He (Mr. Wilkins) hoped that his learned friend, Mr. Erle, would adopt a similar line of conduct. His client, the prisoner Barber, demanded from the learned gentleman, from the jury, and from his Lordship the strictest scrutiny and investigation; he appealed to no man's mercy - he appealed only to their justice.
6. So strongly convinced was he (Mr. Wilkins) of his client's innocence, so fully satisfied was he that this case required investigation, that, though his learned friend, Mr. Greaves had raised several points of law on behalf of his client, and had sought to avail himself of every possible technicality, not one point of law had he (Mr. Wilkins) taken - not one technical objection had he raised. He believed that in the annals of trials of this character a parallel case could scarcely be found in which counsel had rested a case so entirely and exclusively upon its own merits. He was glad, as far as his client Barber was concerned, that his Lordship had declined to accede to the application of his learned friends Mr. Greaves and Mr. Ballantine; for, although they might have been acquitted on mere technicalities, his client would again have had to pass through this fiery ordeal.
7. His learned friend, Mr. Erle, had commenced by stating the nature of the charge against the prisoners in this case. Six of the counts in this indictment, as far as Barber was concerned, fell to the ground; for in those six counts he was charged with forgery, and not a tittle of evidence had been adduced to show that he had been guilty of such an offence. But, much as he felt, for his client; deeply and solemnly - he said it in the presence of heaven - as he was impressed with the belief of his innocence, he did not make any appeal to the mercy of the jury.

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<sup>29</sup> *The Times*, (1844) 'The Will Forgeries' 19 April.

8. If the charge now urged against Barber was proved, the welfare of society required that he should be punished; if it was not proved, the laws of his country, and the conscientious convictions of the jury, demanded his acquittal.
9. His client was charged with forging the will of Anne Slack, or with being accessory to such forgery; and he was further charged with uttering the forged will. He contended, and he hoped to satisfy the jury of the fact, that his client, an attorney, had done nothing in this case inconsistent with the character of an honest and upright professional man.
10. His learned friend (Mr. Erle), in giving them a history of this case, had stated that when the dividends on property in the funds had remained unclaimed for a period of 10 years they were transferred to the Commissioners for the Reduction of the National Debt; but that, if the owner of such stock substantiated his claim to it, the stock was retransferred.
11. But the learned gentleman did not state what investigation was necessary before this could be done. His learned friend did not inform them that, in order to effect this object, probates of wills must be left at the Bank, and subjected to the examination of some of the most skilful attorneys in the country.
12. He (Mr. Wilkins) believed, from the acrimony which had been exhibited towards Mr. Barber by the parties who conducted this prosecution, that their only object was to convict him. But, despite their playing upon the fears of Mrs Dorey, of the witness Christmas, and of Griffin, they had not been able to show one single act on the part of Barber inconsistent with the conduct of an honourable professional man.
13. He (Mr. Wilkins) dared them to point to a single word in Mrs Dorey's confession, or in the statement of Christmas, by which Barber was implicated. If Mrs Dorey's confession would have assisted the prosecutors in making out their case undoubtedly they would have produced it, but they have not chosen to do so; and he left the jury to draw their own inference.
14. He believed the acrimony manifested by Messrs. Freshfield, the conductors of this prosecution against his client, arose from their desire to vindicate their own characters with the public. Their conduct had been scandalously negligent, and their neglect had afforded facilities for the commission of such offences as that now charged against the prisoners. It was with them, as it was with all persons who were detected in acts of misconduct or negligence – they evinced the utmost hatred and acrimony towards those by whose means they imagined their negligence had been brought to light.
15. His learned friend Mr. Erle had stated that, in March, 1843, a will, purporting to be that of Anne Slack, was produced at Doctors'-commons. By whom was it produced there? He begged the attention of the jury to the fact that, wherever any personal appearance was required, wherever any public transaction was requisite, the prisoner Barber was engaged in it. They found Barber at the proctor's office; at the Bank: in fact, engaged in every public proceeding connected with these transactions. On the 27th of March, 1843, the probate of the will to which he had referred was lodged at the Bank of England.
16. Did his learned friend, Mr. Erle, see, in his anxiety to convict Barber, how far he was inculcating the persons connected with the Bank? His learned friend (Mr. Erle) told them there was something on the face of the will calculated to excite the suspicion of any intelligent man. How was it, then, that the suspicions of the lynx-eyed Mr. Freshfield - the acute, vigilant, active, never-sleeping Mr. Freshfield - were not excited? Why did the Bank authorities require that the will should be left with them, unless it was that they might examine it, and make themselves acquainted with its contents?

17. If there was anything suspicious upon the face of this will, let the Bank of England get another solicitor, let them give Mr. Freshfield a retiring pension, and put somebody else in his place. If there was anything on the face of the will calculated to excite suspicion, why did not the Bank solicitors inquire into the matter?
18. The jury must not suppose that he meant to impute to Messrs. Freshfield any carelessness or want of vigilance generally. Oh, no: if they went to Her Majesty's colonies, they would have no difficulty in finding many proofs of the vigilance and activity of those gentlemen.
19. But not only had this will been subjected to scrutiny at the Bank of England, but it had also undergone investigation at Doctors'-commons. Did anyone at Doctors'-commons intimate that there was anything suspicious about it? Did any living soul, except a prosecuting counsel, ever designate it as a suspicious will? Was it, he asked the jury, to be supposed that his client, Mr. Barber, was more vigilant than Mr. Freshfield?
20. His learned friend had admitted that the person who gained this property under the name of Emma Slack had been introduced to Barber as Emma Slack; and he (Mr. Wilkins) would be able to show them that, in order to gain the assistance of Barber in this transaction, much greater pains had been taken to blind him to its real nature than had been taken to deceive the Bank, the proctor, or any other person.
21. Not one single witness had been called to show that, until the woman who represented Emma Slack was taken to Barber's office, and introduced as Miss Slack, he had ever seen her.
22. The prisoner Fletcher had moved in a respectable sphere: he was a member of the medical profession; he was a wealthy man, as had been proved by his banker; and he had been Mr. Barber's client since 1838. If a person who was an utter stranger to Barber had applied to him with regard to a transaction of this nature, he would, undoubtedly, have instituted some inquiries; but the case was widely different when an application was made to him by man of wealth and character, who had long been his client.
23. His learned friend Mr. Erle had stated that Barber was an attorney. He (Mr. Wilkins) entreated the jury to take that fact as their guiding star in investigating this case. Mr. Barber was Fletcher's attorney; and he would put it to the jury whether, throughout the whole of these transactions, Barber had done anything inconsistent with his character as a professional man? If Barber had not been an attorney, much of his conduct would have been inexplicable; but, if they found that everything he had done, upon which it was sought to found an accusation against him, had been done in his capacity as an attorney, and had been done publicly; if they found, that in many cases he had done that publicly which he might have done privately with impunity - such facts must weigh strongly in his favour when it became the duty of the jury to come to a decision upon this question.
24. Many of the documents which had been produced were in Barber's handwriting; some of them were in the handwriting of his partner; others were in the name of Barber and Bircham.
25. His learned friend Mr. Erle had stated that Barber and Fletcher had been well acquainted for some years; but no evidence had been adduced in proof of that statement. That they were acquainted as client and attorney was true; but no intimacy had ever subsisted between them. Barber was never seen at Fletcher's house, nor was Fletcher ever seen at Barber's: there had been no communication or correspondence between them, except in their respective capacities of client and attorney. Did the jury believe that if any intimacy had subsisted between them, evidence of the fact would not have been adduced?

26. The two Forresters, most sagacious officers, had been employed to investigate this case; and for three weeks after Mr. Freshfield called upon Barber and told him the will was a forgery, and that he must report the fact to the Treasury, who would certainly prosecute, one of the Forresters was constantly watching Barber.
27. Had Barber been guilty, if there was any period at which he would have sought the society of Fletcher, it would have been then. Had he been guilty, the moment Mr. Freshfield left his office he would have called a cab, he would have driven to Fletcher's house, and he would have concocted with him either the means of escape or of avoiding detection. But no: Forrester was watching Barber for three week [sic]; Barber never went to Fletcher's; he went to his office, as usual, every morning, returning at night; and when his papers were seized all the documents connected with his transaction were found, tied up together, and endorsed, "Re Slack," in the handwriting of Barber's partner. There was not a single paper or document which showed that there had been any correspondence whatever between Barber and Fletcher as to this transaction. Did not this fact convince them that Barber and Fletcher were not acquainted in any other capacity than as attorney and client?
28. It might be true that before this transaction Fletcher had been intimate with Mrs Dorey and Mrs Sanders; but they could not show that Barber was even acquainted with those women. During the time when the supposed Emma Slack resided in Francis-street, Tottenham-court-road, it was not shown that Barber was ever there, though she was visited by a person whom she called her attorney.
29. It had been proved that the witness Christmas had means of knowing when unclaimed stock was about to be transferred to the Commissioners for the Reduction of the National Debt; and it was shown that he and Fletcher were intimate friends. Christmas was asked this morning if he had ever made any communication as to this property of Ann Slack's to any other person besides Fletcher, and he answered "No." if Barber and Fletcher had been colleagues in crime, did they think that Christmas would have kept entirely aloof from Barber? There was not a tittle of evidence that they had ever met.
30. Christmas, it appeared, was acquainted with the amount and description of unclaimed stock; this information he communicated to Fletcher; but he thought the jury would be of opinion that the information Fletcher had communicated to Barber on this subject was very slight, and that Barber had only acted in conformity with the instructions he received.
31. It had been proved that Fletcher was at the station at Abbots-Langley, making inquiries respecting Miss Slack. Barber was not there. The learned gentleman (Mr. Erle) had stated that when Fletcher returned to London he communicated to Barber the information he had obtained. Had that been proved in evidence? That Fletcher did make a communication to Barber was true; but his learned friend could not show that Fletcher had communicated to him all that he had learned and all that had occurred at the railway-station.
32. His learned friend then called attention to the correspondence between Barber and Captain Foscett. Barber must have believed that Ann Slack was dead, when the register of death was produced to him; and he stated in one of his letters to Captain Foscett, "We find an entry of the death of Ann Slack, formerly of Chelsea, at Somerset-house, by which it appears she died at Bath." He had been informed there was such an entry there, and he believed it. If he had not believed the representation, was it probable he would have made the statement, when Mr. Baxter, Captain Foscett's solicitor, might have satisfied himself of its accuracy in 10 minutes by sending to Somerset-house?
33. He begged to call the attention of the jury to this correspondence. By whom were the letters to Captain Foscett signed? By Barber and Bircham. To whom were the letters addressed in



reply? To Barber and Bircham's office. In that office there were six or seven clerks; and he had no doubt the jury were aware that all that is received at the office of a professional man, not marked "private," were opened, in the absence of the principals, by the managing clerk. Why, had Barber been a guilty participator in the transaction, he, being the shrewd and clever man he was represented to be, must have known that there was no necessity whatever for him to engage in this correspondence.

34. If he had wanted information he would have been found prowling about Captain Foscett's house, or making enquiries at the railway station; but he thought the jury must be convinced that he had acted in a fair, open, and candid manner.
35. He (Mr. Wilkins) believed that every letter written to Captain Foscett was written by a clerk, and was only signed by Barber.
36. Captain Foscett called upon Barber, from whom, he said, he could get no information. Why should Barber give such information? He believed he had discovered that somebody was entitled to certain property, and his object was to discover the owner, and, fairly and properly enough, to get something by it himself. Was it likely then that he would tell Captain Foscett where the money was, or in what name, until he was satisfied that Captain Foscett's sister was the person entitled to it?
37. But Barber wrote to Captain Foscett for the signature of Miss Slack; and it had been said that he made this application to obtain the signature with a view to its forgery. How did it happen then, that the real Miss Slack's signature was a beautiful, ladylike, running hand, while the signature to the will had been described as a stiff, large, upright hand, not in the slightest degree resembling the writing of the real Miss Slack.
38. But it was said that Barber had stated that he had unusual means of obtaining information at the Bank: and so he had, Fletcher communicating to him the information he procured from Christmas.
39. To show that there was nothing wrong with regard to the signature of Miss Slack he would remind them by whose advice that signature was furnished to Barber. It was furnished by Captain Foscett, at the recommendation of his attorney, Mr. Baxter. Fletcher took the signature to Christmas, who said he thought it did not correspond with that in the Bank books; and Barber wrote to Mr. Baxter, announcing that this was the case.
40. His learned friend (Mr. Erle) had stated that on the 25th of February Fletcher went to the Registrars office in Belgrave-square, and registered the death of Anne Slack. He would here observe that the evidence for the prosecution in this part of the case as to the handwriting was palpably contradictory, some of the Bank clerks having sworn the handwriting was Fletcher's, while a clerk from the bank at Bristol deposed that it was Sanders's. For his own part, he thought the Bank ought to appoint a new class of officers – identifiers-general and remembrancers-general. But the register of this death was not necessary to deceive anyone but Barber.
41. It was not necessary at the Bank, or at Doctors'-commons, or for obtaining the transfer of stock. If that register was necessary for any purpose at all, it was necessary to deceive Barber; and where was it found? In Barber's office, tied up with the other papers relating to this case. They would note that Barber had nothing whatever to do with obtaining this register.
42. On the 8th of March, 1843, an advertisement was inserted in *The Times* newspaper for the discovery of the legal personal representatives of Ann Slack. Was this consistent with guilt? They must see that Barber had, from beginning to end, courted investigation and inquiry. This advertisement showed that Barber was acting *bona fide*, and that he was endeavouring

to find out the true owner of this property. What, if Barber had been desirous of maintaining secrecy, would he have inserted such an advertisement in that journal which found its way throughout the length and breadth of this kingdom, and almost throughout the continent of Europe?

43. Mr. Offley's answer to that advertisement was put in, but the reply to his letter was withdrawn, and why? Because that reply turned out to be Mr. Bircham's, and so weakened the case for the prosecution.
44. The prisoner Barber laboured under this disadvantage – that all business of this kind was necessarily of a private nature; and, as no clerks or other persons were present at the interviews when he received his instructions, he had no one to whom he could appeal in vindication of his conduct.
45. It appeared that lodgings were taken in Francis-street, Tottenham-court-road, for a person who went by the name of Emma Slack. Barber was never there; and he submitted that this step was taken only for the purpose of deceiving Barber, for it was not necessary either to deceive either the Bank authorities or the proctor, or any other party concerned in these transactions.
46. On the 16th of March, a female having been introduced to Barber, at his office, as Miss Slack, he went with her to a proctor's, - not to a stranger, but to Mr. Wills, a gentleman with whom he had transacted business both before and since. Mr. Wills stated that Barber, throughout this transaction, behaved honestly and fairly, acting as attorneys generally do; and Mr. Wills's expression was that "it was a very ordinary transaction." Barber paid the probate duty, but Mr. Wills stated that it was usual for attorneys to do so. The property was sworn under £5000.
47. His learned friend Mr. Erle had observed that though, in Captain Foskett's case, Barber had made many inquiries, yet in this case of the supposed Emma Slack he seemed to have made no inquiries at all. But he must remind the jury that Captain Foskett had not given any satisfactory answer: on the contrary, what he had said and done would be sufficient to persuade any reasonable man that his sister-in-law was not the person entitled to the property respecting which Barber was inquiring. They must remember, also, that Captain Foskett was an utter stranger to Barber, while Fletcher, who introduced to him Emma Slack, was an old client, and had gained his confidence.
48. The letter containing an application for the re-transfer of the stock was not in Barber's handwriting; And, though none of the Bank clerks would admit that it was in Mr. Bircham's handwriting, none of them would not say that it was not.
49. Barber, having obtained probate of the will, went through all the necessary investigations publicly, in order to obtain the stock. He introduced Emma Slack to Mr. Philpotts, with whom he had had two other transactions, and who had known him for five years.
50. Mr. Philpotts identified Emma Slack at the Bank, and why? Because she was introduced by Barber, whom he considered a respectable man. Mr. Philpotts stated that he had identified upwards of 300 persons in the same way.
51. It was stated that a memorandum on the order, showing the manner in which the sum was to be paid, was in the handwriting of the prisoner Barber. That circumstance, he (Mr. Wilkins) contended, weighed in his client's favour. There was not the slightest necessity for Barber to have written a single figure upon that order; nay, it was not necessary for him to go to the Bank at all, for he had before done all that he was professionally required to do; but, seeing a lady alone and unprotected, his gallantry led him to accompany her.

52. Great stress had been laid on the fact £600 of the amount paid was received in gold; but Mr. Philpotts said that was by no means an unusual transaction. £600 was paid in gold, and £550 in notes, but he begged to remind the jury that the value of the principal stock, upwards of £3,000, was received entirely in notes. The impression the learned counsel on the other side wished to create was, that the object of the prisoners was to obtain money which they could easily pass; but, if that was their object, why did they take three notes of £1,000 each in payment of the principal stock? When the parties returned to Mr. Philpott's [sic] office, it appeared that Fletcher was there. The jury would observe that whenever any risk was incurred Barber was present; he sought no concealment; he did everything in an open and fair manner. There was no evidence whatever to show that any of the notes received in payment for the stock or dividends ever went into Barber's hands.
53. If his client Mr. Barber, was acquitted on this charge he would be thrown upon the world penniless; everything he possessed had been sold up. Where, then, was his share of the produce of these frauds? They had before them this morning a clerk in the Bank of England, who stated that Mr. Barber had banked with that establishment since 1840. The prosecutors had sent down to Bristol to ascertain what amount of money the prisoner William Sanders had in the bank there; they had instituted inquiries at the Westminster Bank as to Fletcher's account. The attorney for the Bank of England was conducting this prosecution, and could they doubt that he had made inquiry as to the state of Barber's account with the Bank? Barber had banked there, as he had before stated, since 1840, and yet they had not shown that either when the money for this stock was received, or at any other time, he had paid in sums of money which laid him open to the suspicion of having participated in the proceeds of these frauds.
54. It was said that Fletcher and Barber determined that one of the £1000 [sic] notes should be cashed for gold; but where was the evidence of that?
55. It was stated that, at Mrs. Dorey's, a £1,000 note was shown to the shopman. Could the prosecutors show that a £1,000 note, or £100, or £10, or £5, had found its way into Barber's hands? Mrs Sanders, it was shown, left Mrs. Dorey's the morning after the note had been exhibited, and returned with a bag full of gold. Alas! poor Mr. Barber, the man whose assistance seemed to be indispensable, who transacted the business at the Bank and at the proctor's, he was penniless!
56. The attention of the Bank was called to this transaction in November, 1843, and Mr. James Freshfield called upon Barber. It had been said the other day – whether intended as a reproach or not he would not pause to inquire – that he (Mr. Wilkins) was a daring advocate. If this assertion meant that, in defence of his client's interests, he was not to be deterred from discharging his duty by smiles or frowns, he admitted its truth; and, high as Mr. Freshfield might stand in society, formidable as he might be as an opponent, valuable as he might be as a supporter, he (Mr. Wilkins) would deal with him as though he were the veriest Lazarus that ever crawled upon the earth.
57. If Mr. Freshfield was his (Mr. Wilkins's) father, and Barber was his client, he would still be the daring advocate to speak of that father as he now spoke of Mr. Freshfield. He would say candidly that he did not believe Mr. Freshfield. He would say candidly that he conceived Mr. Freshfield had given evidence which was not creditable to himself, and the reproach of which would, he believed, attach to him as long as he might live. Why should Mr. Freshfield – who one would suppose, was a man well able to recapitulate what he had seen or heard – come into the witness-box and read them a sort of brief? Why should Mr. Freshfield – who well knew what lawyers mean by *suppressio veri* [concealment of the truth] – have wilfully withheld from his statement the only fact that could be twisted out of him that was

favourable to Barber? He (Mr. Wilkins) asked Mr. Freshfield, "Did Barber manifest any indignation on that occasion?" The witness replied, "He did." "Why did you suppress that? had you forgotten it?" he (Mr. Wilkins) asked the witness. "No." Did you suppress it wilfully?" Mr. Freshfield saw the position he was in; he paused a moment before he replied, and then he said, "Yes." He (Mr. Wilkins) would not pretend to disguise his feelings on this subject; and, though at the risk of offending so great a man as Mr. Freshfield, he would say that the suppression of this fact – that suppression having been acknowledged to be wilful – vitiated the whole statement: it showed with what view the statement was prepared, and it showed why the witness was afraid to trust his memory to recapitulate what he had before read from a written paper.

58. Why, when Mr. Freshfield called upon Barber at his office he did not look upon him as a criminal. Oh, no. If he had done so, he would have had Daniel Forrester at the door. He (Mr. Wilkins) had asked Mr. Freshfield whether he had given instructions to the officer Forrester to watch Barber. The answer was, "No." What, did Mr. Freshfield believe that Barber was guilty of forgery, and yet take no steps to apprehend him? Could they doubt then that, at that time, when Mr. Freshfield left Barber, he believed that he was an innocent man? Had Barber been guilty, there was nothing to prevent him from escaping and quitting the country.
59. But it had been said that when Barber was examined before the Lord Mayor, and his Lordship refused to receive bail, Barber consulted with Fletcher for some time before he called him as a witness.
60. Why, would any professional man put a witness into the box without knowing what he was going to prove, and whether or not he was disposed to speak the truth? Was it likely, if Barber was aware that a forgery had been committed, and if he had been acting in concert with Fletcher, that he would have dared to call that man as a witness? No: Fletcher would have been the last man he would, under such circumstances, have wished to see. Was not Barber's conduct, then, strongly in his favour? Did it not show that he did not shrink from inquiry?
61. "But," said his learned friend Mr Erle, "why, when a person answering the description of Anne Slack in all respects had been found, did you admit the claim of the pretended Emma Slack?" Had a person answering the description been found? Captain Foskett had represented the age of his sister in law as 27, while it was known Anne Slack must have been 40; and he stated that she had a trustee named Hulme living, that she received her own dividends, and that she had no unclaimed stock. The doubt that had arisen, therefore, in Mr. Barber's mind was owing to Captain Foskett's caution, and to the imperfect information he afforded.
62. His learned friend, Mr. Erle, had called upon the jury to temper their decision with mercy, if they could conscientiously do so. But he (Mr. Wilkins) would not stoop to take a verdict from their pity; he did not wish to take his client, Barber, out of that dock with the films of doubt and suspicion clouding his path. He asked for justice - for nothing more than justice; and if he should be instrumental in restoring his client to society he would indeed be amply repaid for all the trouble and anxiety he had bestowed upon this case.
63. The learned gentleman went through the whole of the evidence with great minuteness, directing the attention of the jury to those portions of it which were favourable to his client, upon which he commented at considerable length. He (Mr. Wilkins) had defied them, and would still defy them, to prove that during any portion of this transaction, or at any period of his life, in all their acquaintance, Mr. Barber had been on any terms of intimacy with Mr. Fletcher other than that of a solicitor and client; it had not been shown, and it would have

been shown if it had been capable of proof, that Mr. Barber had at any time, either in the street or in any public or private place whatever, displayed such an intimate acquaintance with Fletcher as the crime charged in this indictment, if there was a letter of truth in it, would naturally suggest that there was. Mr. Fletcher was a surgeon, an old and hitherto a good client of Mr Barber's. He it was who knew all the other parties implicated in this affair; he it was who introduced the Miss Slack who had made the entry in the registry, which had been the chief cause of Mr Barber's being imposed upon. The learned counsel then proceeded to say, that they were but a few further observations which he felt it to be his duty to address to the jury after having gone through the whole of the evidence which in any way tended to implicate his client, and then said, that he felt assured the jury would return such a verdict as they would be enabled to reflect upon with pleasure after returning to their homes when the inquiry had terminated. You have (said he) been now for some lengthened period separated from your business and families; there is many an anxious heart looking forward with interest to the time when you shall be restored to your homes; there has been a chasm made in the little society to which you severally belong, and, therefore, it needs not me to ask for your sympathies for the prisoner at the bar, who has been torn from his home to be placed, without a moment's notice, in a felon's dock, who has had his papers seized, and has been deserted by almost all his friends at the very hour when he most needed them, and at a time when, I will venture to say, he deserved them as much is at any other period of his life. But I do not ask for your sympathy on those grounds. I wish not to steal a verdict from you. It would but little satisfy the object that I have in view. I only wish to stir you up to a proper state of diligence to scrutinize narrowly the evidence which has been laid before you on behalf of the prosecution, in order that you may return a verdict consistent with the oath you have taken, and that Christian religion to which you one and all belong; and I do most earnestly beseech you, not to allow yourselves to be operated upon or influenced by the popular clamour that has been raised in this case; for what a mischievous and deceitful demon is that same popular clamour: we have seen it one day shouting with loud acclaim, "Long live Pompey," and the next day joining in the shout of praise for Pompey's murderer; we have seen it today raising the joyful cry of "Hozanna in the highest," and tomorrow hurrying the saviour of mankind to an ignominious death; but let, I beseech you, that place, the jury-box, be sacred; allow no prejudice to have admission there . I hope that the light of heaven will be vouchsafed to you to assist you in this momentous inquiry, and direct you to a right conclusion. I ask you, I implore you, I demand of you, from the evidence which has been given, to acquit that man of the serious charge made against him, fully and fairly to acquit him; and if, through my humble endeavours, that poor man shall be restored to that station in society from which he has been so lately hurled, and to which he is fully entitled, I shall feel amply compensated for the many, many anxious hours I have bestowed upon this case, and in after years, if it shall please God to spare me, I shall look back upon this time as the brightest period of my existence, and feel that I have not altogether lived in vain. I now leave this case in your hands, and pray to God that your verdict may be consistent with sober sense and reason, and compatible with the stern dictates of humanity and justice.

64. The learned gentleman's address occupied four hours and a quarter in its delivery, and seemed to produce a great sensation in court. There was an inclination on the part of the audience to applaud when he resumed his seat, which was instantly repressed by the officers of the court.

[ends]

## Appendix 13 Wilkins Speech for the Defence in *Slack, Morning Post*

### Mr. Wilkins's Speech from the *Morning Post*<sup>30</sup>

1. Mr. Wilkins then rose – They were now entering upon the third day of the investigation of this important case, and, judging from the appearance which the Court then exhibited, it seemed to him, that as far as this case was concerned, the public interest had not at all abated, and he was fain to believe that many of the auditors and spectators who had crowded the Court during the progress of the investigation were actuated by higher and better motives than merely seeking in such a scene for sources of amusement and opportunities of pastime. If this were so – if they came with unexceptionable motives to witness that important scene in the great drama of social life - they must have learned some important lessons from what had passed before, and, amongst others, in his estimation, not the least so, that of truly valuing the rights in which, as British subjects, they were entitled; and estimating the privileges which, as such, they enjoyed. Without the slightest affectation he would say that to him it was one of the most gratifying sights, one of the most consoling circumstances in the conduct of this case, to witness the immense estimate set by the laws under which they lived upon the happiness and privileges of others – to see twelve gentlemen like themselves, without murmur or repining, dedicating and devoting their time, their talents, and their attention to an investigation of that description, and to witness also on the part of some of the highest functionaries of the land the most untiring diligence and the most exemplary perseverance in seeking to arrive on so grave an occasion at the truth.
2. To witness all this was to him a source of the greatest delight, and it proved to him the truth of the declaration one of the best essayists who ever penned in the English language, that how much soever we might prize our institutions, from the palace to the cottage, from the throne to the coronet, and downwards, through all the various gradations of society, all pointed for their security to the Jury-box; and [if] there was then present one who might have come from other climes, if he were a contemplated and reflective man, in coming there he would at once see in what it was that their security consisted, to what it was that the Queen on the throne of her greatness, his safety and happiness, and discover why it was that the English peasant and the English beggar enjoyed rights and privileges which in other climes were withheld from some of the highest in the land.
3. They (the Jury) had, throughout the whole of that laborious and intricate case, manifested a patience which was creditable to them, as they were consolatory to those standing accused before them; and when, during the progress of the evidence, he had taken leave to call the attention of the foreman of the Jury to a fact which to him had appeared most important to the interests of his client, it was not sought to draw any invidious distinctions between him and his brother Jurymen, for if he were to draw any distinctions at all, they would be in favour of the whole panel. From first to last, it was but justice to them to say, that he had witnessed their conduct with pleasure - their untiring diligence, and their seeming determination, not to trust to the chances of memory; but to commit to paper everything which might in the slightest degree assist them in arriving at a correct decision. Their conduct had afforded to him a consolation greater than he could express: and had given rise to feelings which he would entertain with the most grateful remembrance towards the Jury which he had done the honour to address. Of necessity he must occupy a considerable portion more of their time. They might readily believe that if, consistently with his duty, he could have shunned such a task he would have done so.

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<sup>30</sup> *Morning Post* (1844) 'The Will Forgeries; Second Case' 19 April.

4. He, accounted the responsibility which, since the commencement of the case, had pressed upon on his mind, which had haunted him in his dreams and formed the subject of his first waking thoughts, and which had so completely engrossed and monopolise his time and attention, that he had not been able to devote himself with the assiduity and punctuality which were his want to his domestic affairs. He, he was aware of the magnitude and importance of the duty which it now devolved upon him to discharge - and courted the responsibility which it involved - must, indeed, be a bold man, and have underrated the task which he had to achieve. To them it would be an insult for him to apologise for the occupation of their time. It would be tantamount to saying to them, that which he did not believe - that he found they had not duly appreciated the importance of the case, and equivalent to a disavowal of all confidence in their mental industry.
5. He was happy to say that he had every confidence in them, and therefore he would proceed before them, as he had done on a former occasion, first of all to go through and analyse the opening address of his Learned Friend the counsel for the prosecution, then examine the evidence in the case, and conclude with such observations as the exigency of the case might justify him in making.
6. He knew not the line of conduct which might be pursued by his Learned Friend the counsel for the prosecution. He bore the readiest testimony to his vast ability - was well aware of his great experience and practice, of that tact and skill, for which in the profession and out of the profession, he was proverbial - and he also knew that that tact and skill if used unfairly might be formidable to his client, unless they watched him closely and weighed well every observation which he might feel himself called upon to make. He knew well how differently advocates engaged on such occasions for the prosecution reasoned in many cases from those who resorted thither, either to sit in a judicial capacity or as spectators, anxious only to attain the truth. They were all of them ever too prone in inquiries of that nature to torture their ingenuity to answer, and, if possible, neutralise any argument which might be urged in favour of the prisoner. They must distinguish between the real state of the case and the reply of the ingenious advocate, who felt himself called upon to convict, and who may have formed impressions during the progress of the investigation which of the men, not intimately wrought up with the case, might not have formed. For that was the peculiar and besetting danger of counsel, that they were too apt to be hurried along with the feelings and imbued with the views of those who instructed them. They must necessarily know, as men of the world, that no man was so likely to reason hastily - no man more likely to overleap premises and to jump at conclusions - than the man who was engaged in a prosecution, no matter what might be the amount, or how disciplinary might have been his experience and practice; and if he were able and skilful, as was his Learned Friend, there was no man so dangerous in employing such conclusions in attempting to impress his views upon the minds of others.
7. He must do his Learned Friend justice to say, that his opening speech was a plain unvarnished statement. He remembered what a learned personage had said in that court the other day. He said that he felt it to be his duty, in conducting a prosecution, not to lie by for a reply - not to withhold or to suppress facts against the prisoner, in order to catch the prisoner in a trap, for, he said, such conduct would not only be cruel and unjust towards the accused, but also inconsistent with the dignity and the honour of that Government which he represented, and without meaning to offer the slightest disparagement to his Learned Friend - the counsel for the prosecution in this case - he would do well to follow so bright an example. He had heard of a learned personage who said that it was a great thing to wallow in the luxury of the last word; but that must be a mean mind, indeed, who, on occasions like

this, could regard that as a luxury. He would readily grant that the opening address of his Learned Friend was candid and fair. He had contented himself with a bare statement of facts. They should soon see whether that characteristic would follow him throughout.

8. From (the Jury), from him (the Counsel for the prosecution), and from his Lordship on the bench, he demanded the most rigid scrutiny and investigation; he demanded [column 2] an inquiry, a fair and searching inquiry. He appealed, in this case, to [no?] man's mercy; he threw himself entirely upon the justice of the Jury.
9. They must have observed that from the beginning of this case to the end, so strong was he in the conviction of that man's (Barber's) innocence, that though some of his Learned Friends have taken objection on points of law, and sought to avail themselves of every possible technicality – that from the beginning to the end of the proceedings no technical objections had been urged by him, no exception whatever taken on points of law; and he would venture to say that there was no other trial of that description in which the Counsel for the prisoner were contented to confine themselves to the facts of the case, and to leave it to be investigated solely upon its merits, to the extent that he had done. He confessed to them, though it would ill have become him to offer any opposition to the application which had been made on behalf of Fletcher and another, that he was glad when his Lordship refused that application. They might have been acquitted on technicalities, but Barber must have again passed through the fiery ordeal to which he had already been subjected; and he was, therefore, delighted when he heard the answer of his Lordship, confident as he was that this investigation would restore his client, not, indeed to the situation in life he had formerly occupied, but restore him at any rate to the smiles of Friendship, and once more to honest industry and exertion.
10. His Learned Friend commenced the proceedings by informing them of the nature of the charge, and he would here say, that six of the counts in this indictment must, so far as Barber was concerned, fall completely to the ground. There were six counts charging Barber for forgery, but there was not a tittle of evidence to substantiate that charge. Barber was charged with an immoral offence - with an offence against the laws of his country - but much as he felt for him, and deeply impressed as he was with a belief in his client's innocence, he would repeat to them what he had already said - that he appealed not to their mercy, but to their justice.
11. If the charge had been made out, then society required that the offender should be punished; if not, then God and the laws of the country required that they should acquit him.
12. He is charged with forging the will of Ann Slack, or of being accessory to the forging thereof. He hoped, before he sat down, to convince them that his client was guilty of neither of these crimes, but that all that had been done by him had been done in the character and capacity of an honest attorney.
13. His Learned Friend had given them a statement of the property which the will purported to convey, and he had given them a history of Miss Slack's affairs as connected with that particular portion. He had informed them that on the death of her father, Mr. Hulme had become his executor, and had managed her affairs up to the period of his death. On his death, which took place in 1832, Miss Slack became manager of her own affairs, and from that period until 1843, she totally lost sight of these £3,500 Consols. Then they saw an instance in the conduct of Miss Slack which showed them how dangerous it was to take an isolated act in her life, and upon that act to found a charge tending to her disparagement.



14. Let them for a moment suppose that there had been a charge against Miss Slack of having in the first instance, fraudulently possessed herself of the stock in question; and, in order to make out that charge, it was said that Miss Slack had, in her name, in the public funds, stock to the amount of £3000, and that from the year 1832 till year 1843 she had never inquired or taken a single step of investigation as to what had become of that stock. Would not this have been regarded as strong proof of her guilt that she did not go to make the necessary inquiry, because she was conscious of having possessed herself of it illegally and fraudulently, that she did not go, because inquiry on her part might have provoked still further inquiry, and probably have subjected her to detection.
15. If he had said that she was not a woman of large income-having, it is true, £500 a year to live upon - that she was moving in the best circles of society, being sister-in-law of an officer in the army, and that therefore every shilling was of the utmost consequence to her - what man would have turned such an insinuation to more ridicule than his Learned Friend?
16. Miss Slack was perfectly capable of managing her own affairs. At the death of Hulme she became her own mistress: at his death her Friends did not at all interfere with her property. What would have been said of his understanding, or of his appreciation of their understandings, if he had said that, though the money was necessary to her, she had allowed it to remain? He did not desire to attribute the slightest impropriety of conduct to Miss Slack. He believed that she was a lady of honour had [sic] integrity. He believed every word she had said. He quoted that merely to show them how dangerous it was to suspect on such instances as these, and to carry that suspicion on to a prosecution, and then to torture his ingenuity to justify the charge that is brought.
17. His Learned Friend had told them the manner in which the property might be transferred - that was to say in the shape of unclaimed dividends - to the commissioners of the national debt [sic]. He stated that in a way which made it appear that he had not reflected much upon the matter, or that he would favour them with the result of his reflections when he came to reply. How often did he (Mr. Wilkins) sit in that Court, engaged in the defence of prisoners, till his blood ran cold in his veins at listening to the cunning artifices which were frequently resorted to bring about a conviction - feeling, at the same time, that if the privilege of the last word were accorded him, he could dissipate with a breath the shallow sophisms which are then adduced as arguments, and which are more the offspring of fancy than the fruits of sound reason.
18. His Learned Friend said that at any time when the real owner appeared the stock was re-transferred. But what was first necessary to be done? How much preparation was necessary for the re-transfer - how many oaths were to be taken - how many parties had to be questioned? Probate of the will must be left at the Bank of England to undergo the inspection of some of the best and ablest solicitors in the land.
19. They, he believed, would sooner convict Barber than all the rest put together, from the malignity and the acrimony they had shown. But, despite all that they had done - despite of their playing upon the fears of that poor woman (Mrs. Dorey) - despite of the evidence of Mr. Christmas - despite them all - they had not been able to show one single act in Mr. Barber's conduct from beginning to end either undignified, or ungentlemanly, or inconsistent with honour.

20. Let them produce Mrs. Dorey's confession. He knew well what that confession was. Let them produce all Mr. Christmas could say – let them bring before them all he said against him from beginning to end, and he still defied them to lay a finger on anything which could convict him. If Mrs. Dorey's confession could have assisted them they would have produced it, but they have chosen to keep it back. That that confession was favourable to his client was the obvious inference from such a course.
21. But it seemed to him, that all the bitterness which had been exhibited towards Mr. Barber in this case was designed, if they could succeed, to vindicate themselves with the public. Their conduct had been scandalously negligent, and had furnished facilities to somebody to commit depredations on the public purse. It was with them precisely as it was with others – that when they themselves were chargeable with misconduct and neglect, they attacked the instruments by whom their conduct was brought to light in such manner as to banish sleep from his pillow, destroy his peace of mind, and render him a beggar. He had not now a penny in the world, and when their verdict should be pronounced, and he should go out of that box, he had no home whither to repair, or any means of subsistence left him.
22. In 1843, the will by which the property passed, was produced at Doctors Commons. By whom was it produced? They would find throughout the whole case, that whenever personal appearance was concerned, Barber was to be found. He was to be found at Doctors Commons, and at the Bank, without the slightest attempt at concealment. And who produced the probate of the will? It was Mr. Barber. And in whose presence? In the presence of those who knew him well. He performed certain acts which proved that he behaved as an innocent man would have behaved, not courting secrecy, but acting frankly, boldly, and openly. Probate was obtained on the 3rd of June, and lodged in the Bank of England.
23. Did his Learned Friend see, in his zeal for convicting Mr. Barber, how he was convicting the people connected with the Bank of England? He had told them, that there was something suspicious on the very face of the will. How happened it that did not excite the suspicions of Mr. Freshfield – the never-sleeping Mr. Freshfield? For what purpose was the probate of the will left at the Bank of England? Was it for the young gentlemen there to amuse themselves with, or as waste paper? Why does the Bank require probate of a will in such cases to be left there, but that they may read it and make themselves acquainted with, and ascertain its character, and have their attention directed to all the parties whom the will affects or interests. It was left then for that, and for no other purpose, and that only showed them that, when people were accused, they took great pains to justify their accusation. When men became accusers, no matter whether the accusation was just or unjust, it sometimes led them into great absurdities.
24. If this will was suspicious on the face of it, then let the Bank of England get another solicitor; if it was bad, let them give Mr. Freshfield a retiring pension. If it invited inquiry, and was suspicious, why did they not inquire into the matter? and if they did make the necessary inquiries, he thought his Learned Friend's observations about suspicious character of the world will fall to the ground.
25. It must not be supposed that he meant to disparage Mr. Freshfield on the ground of carelessness. On the contrary, they found plenty of evidence to prove that gentleman's vigilance. There was not a more vigilant man in the Kingdom, as he would show them when he came to Mr. Freshfield's evidence.

26. But not only was the will in the Bank of England, but it was also subjected to the investigation of the people at Doctors Commons. Did anybody in Doctors Commons say it was a suspicious will? Did any living soul, except the prosecuting counsel, ever say it was a suspicious will? Mr. Wills, a gentleman of great experience in these matters, thought it all fair and right. He told them that it was a very fair and straightforward transaction. Nobody thought it a suspicious will but his Learned Friend. Why, then, should Barber be supposed to know it to be suspicious?
27. Emma Slack claimed the property. His Learned Friend admitted that the lady was introduced to Mr. Barber as Emma Slack. He believed her to be Emma Slack. By and by he would show them that greater pains had been taken to deceive Mr. Barber than had ever been taken to deceive any other person in the world in such a transaction. He would show them that more pains had been taken to blind and deceive him than had been taken to deceive the Bank of England, the proctor, and all the rest put together. He believed the lady to be in reality Miss Slack. She was dressed in mourning the more to deceive him; she was a respectable looking person, and called herself Miss Slack. The lodgings were taken in the name of Slack.
28. They had not called one single witness to show that until she was brought to Barber's office, and introduced to him as Miss Slack, he had ever seen her before. He went to the Bank in his own proper person - he went to the Proctor, to whom he was known, Mr. Wills, and who had told them he had always regarded him as a man of the highest honour. The stock was sold out in her name. No resistance whatever was made by the Bank. The money was paid to her name. No resistance whatever was made to this. And under what instrument? Under the all-suspicious will. The probate was obtained in March, and on the 3d of April the stock was sold, and then his Learned Friend concluded that part of his observations by advising them to discharge [column 3] from their minds anything they might have heard being sworn in as Jurors. He was sure the confidence expressed in them by his Lordship was well deserved. They would try this by the evidence adduced before them, in accordance with the solemn oath which they had taken. His Learned Friend had said, that on account of the enormity of the charge, humanity required that the proof should be clear. Was that so? and was it true that when there was a doubt the accused was entitled to the benefit of that doubt? If that were true, they had heard the evidence of the prosecution, and he would ask them now to take their stand on the position of his Learned Friend, and could any of them say that the proof was clear beyond all doubt, that the requirements of humanity had been met. He put the matter on other grounds. Something more than humanity required it. He who knew the secrets of all hearts - whose name they had solemnly invoked, in the administration of the oath to them - he [sic] required at their hands that, before they pronounced their verdict, the charge should be fully made out. He who taught them their proneness to error - He who taught them that lack of charity was a degraded characteristic of fallen humanity - that there was a readiness in men to suspect and accuse, and believe circumstances of the disparagement of others, who taught them also how prone they were to deceive themselves, and to judge on slender premises, when the judgment tends to disparage their fellow-creatures, he [sic] required that their decision should be founded on nothing but the clearest evidence.
29. But he would now go on to follow up his Learned Friend's speech. He had informed them that Fletcher was a member of the medical profession. Fletcher moved in a respectable sphere. He was a wealthy man, as proved by his banker. He was a man, according to his Learned Friend, who had been Barber's client since 1838. If a man of questionable character had come to Barber, he must then have been set on inquiry suspecting and misgiving; but

there was a vast difference between that and a man who was a respectable client coming to his solicitor's office.

30. Then, said his Learned Friend, Mr. Barber was an attorney. He (Mr. Wilkins) besought them to take that as their guide, their leading star throughout the case. Barber was Fletcher's attorney. He would ask them whether everything which Barber had done was not perfectly consistent with his character as an attorney? If he, too, had been a medical man, like Fletcher – if he had not been an attorney – then he would grant them that a great deal of what he had done would have been inexplicable. But when they found that everything which he had done, and on which it was sought to found the charge, was necessary to be done by an attorney – when everything was done, also, in a public manner, and in some cases transacted publicly, when they might not have been so – when they found that in every single instance in which his handwriting was required it was given, or a person to witness the transaction was present - would not all these circumstances weigh with them in coming to their decision?
31. Most of the documents produced were in Barber's handwriting – some of them in the handwriting of his partner, and everything was done in the name of Barber and Bircham. let them take that - let them look at every single act, and bear constantly in remembrance that Barber was Fletcher's attorney – that was the clue to the whole investigation.
32. He informed you that they were well acquainted for some years. There was no evidence of anything of the sort – that they were acquainted as client and attorney was true, but never in any other capacity. Barber was never shown to have been at Fletcher's house, nor Fletcher at Barber's. He was not shown to have ever eat [sic] or drank with him, nor was he ever in correspondence or communication with him in any other capacity than as his attorney. Did they not think that if such had been the case it would have been proved before them?
33. Mr. Forrester had been called before them – no doubt a most valuable officer – valuable for aught he knew for his integrity, and valuable as an officer on account of his extreme vigilance. For three weeks after Mr. Freshfield had called on Barber, after Mr. Freshfield had told Barber that the will was a forgery, and that he could admit of no delay, for that most assuredly the Treasury would prosecute, [sic] for these three weeks. Forrester was constantly watching Barber.
34. If Barber were a guilty man – if there was any time when he would have sought society of, Fletcher – it would have been then. What would, if guilty have been his conduct? The moment Mr. Freshfield had retired, he would have gone to Fletcher, and with him concocted the means of safety and escape. But there stood Forrester, vigilantly watching him but never detected him going to Fletcher's during all that period. Barber went to the office as usual, and when his papers were seized, there was found in them everything connected with this transaction, while there was not a single line in those papers which were found marked in large letters, “E. Slack,” to indicate that Barber and Fletcher ever corresponded in the slightest degree respecting this transaction? [sic] Could they doubt but that he made every possible inquiry? But with all his investigation and all his diligence, he had not been able to show them, by any one transaction, that Barber and Fletcher were ever seen together in any capacity, except as attorney and client. If, then, his Learned Friend meant to insinuate that they were on intimate terms, he had failed to prove that they were so.
35. He told you that Mrs. Dorey was the wife of a man in Oxford-street, and Mrs. Sanders was the sister of Mrs. Dorey, and both were acquainted for several years with Fletcher. He could not help, in duty to his client, drawing a contrast respecting the character of Mr. Barber, as

compared with that of others. It might be true that Fletcher was intimate with them. It could not be shown that Barber was. During the whole time that the supposed Emma Slack was in Francis-street, Tottenham-court-road, although a person represented as her lawyer visited her frequently, it was not Barber. He was never seen there. He was not known to her. He had never spoken to her until she was introduced to him at his office.

36. In the autumn of 1842, Christmas knew that some stock was about to be transferred, and it turned out in evidence that Christmas and Fletcher were intimate Friends. Christmas was asked by his Lordship this morning - and he (Mr. Wilkins) thanked his lordship for the inquiry, and deemed the answer of great importance to him, as it was exculpatory of Barber. And what did Christmas say? That he had informed no one except Fletcher of the stock to the amount of £3,500 which was about to be transferred. If Barber and Fletcher had been colleagues in crime - if they had been together reaping the fruits of fraudulent, vicious and dishonest transactions, did they think Barber would have been kept aloof from Christmas? But Christmas never saw Barber in his life.
37. His Learned Friend had said that the amount and description of the stock formed the all-important secret. There was a dividend published which described the stock and the name of the claimant, and contained the all-important secret of the amount and description of stock. Christmas knew it and imparted it to Fletcher, but the information which the latter gave to Barber was scanty, and they would be of opinion that whatever Barber had done he had only acted in obedience to his instructions in answering the different parties who came to make inquiries.
38. Fletcher, in 1842, was at the railway station at Langley. Barber was not there. There was another person there, but it was not Barber. Miss Slack had left Chelsea, and was living with her brother-in-law, Captain Foscett. Fletcher inquired for Miss Slack at the station, and proposed to go to her. That his Learned Friend Mr. Greaves would answer; Barber was not implicated in it, for he was not there. They were told, that when Fletcher returned to London, he communicated to Barber what he had heard. Where did his Learned Friend obtain that information? There was no proof of it in the evidence. Fletcher did make a communication to Barber it was true; but if his Learned Friend said that he communicated to him what had happened at the station; he (Mr. Wilkins) looked in vain for that in the evidence. He did give him some information, and Mr. Barber acted on it *bona fide*.
39. His Learned Friend then called their attention to the correspondence between Barber and Captain Foscett. The first letter was written in October, 1842, asking about Anne Slack and her representatives, and inquiring about her decease. Barber was here too, acting on his instructions, and, seeing that the dividends had been unclaimed for ten years, he might well suppose that she was deceased. Barber, believing that to be the case, might have represented it as such. The very fact of his stating that she was deceased showed that he was acting on the instructions of others, and acting in ignorance of the facts of the case.
40. Captain Foscett's reply was on the 13th. To that Barber replied, and his reply contained the remarkable statement that an entry of her death was found in Somerset-house, by which it appeared that she died at Bath. Mr. Freshfield seemed to lay much stress upon that; but he (Mr. Wilkins) had drawn from it conclusions directly opposite to his. Mr. Freshfield said that Mr. Barber had been corresponding with Captain Foscett about one Anne Slack, whom he described as deceased in October. But his answer to that was that he described her so because she had been described to him as deceased. He had acted upon instructions given him by a respectable man. He said more.

41. It was true he said in his letter he found an entry of the death of Anne Slack, in Somerset-house. Why did he say so? Because it was so represented to him. The man who entered the registry of her death, who was present at, and described the cause of her death - that man told him there was an entry to that effect at Somerset-house. If he had known that there was no entry in Somerset-house, he would have trembled to make such a statement. He (Captain Foscett) might have gone in ten minutes to Somerset-house, and have ascertained whether that statement was true. If Barber had stated that which he knew to be false, he would say to himself, "I will take care to keep out of view anything that might expose my deception or tend to bring me into jeopardy."
42. Besides, let the Jury observe that it was altogether unnecessary for Barber to have made any such statement. All that he was called on to say was, that he found that Anne Slack was dead, and pointing out Somerset-house was altogether unnecessary. If he knew that he was telling a lie his reference to Somerset House could not assist him - on the contrary, would it not rather be an impediment to him? Let them recollect that Barber lived at Blackfriars, within three hundred yards of Somerset House, so that he must know that nothing would have been easier than to have detected the falsehood, if he stated what was untrue. But in stating this, Barber did not mean to say that he saw the entry - that he had read the entry - but that he had reason to believe that such an entry was there. If Barber knew that he was stating a falsehood, would he have directed Captain Foscett to the very place where that lie would be instantly detected.
43. He (Mr. Wilkins) certainly drew a very different conclusion. Let them observe that there was nothing about Captain Foscett, or the part he had acted, to induce the notion that that gentleman was at all deficient in understanding - questions he had put to Barber, and his entire conduct throughout the transaction, induced the belief that he was not at all deficient in understanding. But even supposing that he was, he had at his elbow Mr. Baxter, Captain Foscett's attorney; and if Mr. Baxter had reason to suppose that Barber had stated a falsehood, would he not have gone to Somerset-house, and have made the inquiry? Well, then, after this, Captain Foscett wrote a letter to Barber, announcing to him that Miss Slack spelled her Christian name Anne, with a final "e." [Column 4, partly corrupted]
44. But what did the whole correspondence with Capt. Foscett show? There were a number of letters addressed to Capt. Foscett - by whom were they signed? By Barber and Bircham. To whom were the letters in reply addressed [and] sent? To the office of Barber and Bircham. There were six or seven clerks in the office; and he (Mr. Wilkins) [need] not tell the Jury that, when letters came to an office of that kind, unless they were marked "private." they were opened by the clerks, lest any of them might require [an] immediate reply. Now, it appeared to him that if Barber [were] the shrewd and clever man that he was represented to be all these proceedings that he adopted with regard to Captain Foscett were altogether useless. There was no necessity for his corresponding with Captain Foscett at all. If he was guilty - if [sic] had a criminal purpose to carry - he could have found other means.
45. If he was guilty, and sought information for a guilty purpose, he might have been found prowling about Captain Foscett's house or concealing himself at a railway station, endeavouring stealthily to fish out information. He might refuse to go to Captain Foscett's house to [??] his information in an open and straightforward manner[.] but everything which he did was open, candid, and above board, and if he had a guilty intention, it was quite [??] that he had no occasion to invite Captain Foscett's [attention] to the circumstances at all. There was no occasion [for] him to write to Captain Foscett's or to open any communication

with that gentleman, unless that Barber was honestly in search of the party to whom the property in reality belonged. And if the letters which he wrote were written in a cautious manner, it was only with that caution [which] his duty to his client as well as to himself called for.

46. [There] was every reason to believe that every letter written to [Captain] Foskett had been written by the clerk of Barber and Bircham, and that the signature only of himself and his [partner] was in the handwriting of Barber.
47. Now, it should be observed that in his interviews with Barber, through]out these transaction, Captain Foskett displayed great dexterity - indeed it would be difficult to say whether the civilian or military man displayed the greatest dexterity. Barber thought that he had found out some person who was entitled to considerable property, and his object [in] making inquiries and endeavouring to complete his information might have been the expectation of getting something for himself; and surely he was not to be expected, after [all] the trouble he had taken, to at once tell Captain Foskett where this money was. If he had done so, of course Captain [Foskett] would have at once gone to the Bank and got the money[.] and all that Barber would, in all probability, have received[,] would have been a polite military bow from Capt. Foskett[.] Barber was engaged in an inquiry which had cost him considerable trouble, and where a considerable sum of money was at stake, and until he was satisfied that Capt. Foskett's sister was the real owner of the property, he would [not] have been justified in giving him the information.
48. Barber wrote to Capt. Foskett for further information, and for [the] signature of Miss Slack, but this did not show a guilty purpose[.] He (Mr. Wilkins) had been amused at the comments [of] one of those learned pundits who every day instructed the public through the medium of the daily press. One of [these] public instructors said that the object of Barber in endeavouring to obtain the signature of Miss Slack was in [order] to forge it. Now it so happened that if this was the object[,] Miss Slack's signature was written in a beautiful lady's running-hand, whilst the signature to the documents in the Bank was a cramped, stiff, heavy hand, and no more to be compared to the writing of Miss Slack than Hercules could be compared to a pigmy. The hand which Miss Slack wrote was that beautiful running-hand which young ladies were taught at boarding-schools, and which they [used] in writing *billets doux*, whilst the signature to these documents was stiff and cramped, and not in the least [degree?] like the signature of Miss Slack.
49. Well, then it was [said] that Barber had said that he had unusual means of information at the Bank, and so he had. Fletcher obtained information from Christmas, and Christmas had said that he had got as much as £500 from several parties for [giving] them that kind of information. He (Mr. Wilkins) [would] not say that Christmas was criminal - he would not [say] that he was wicked for having done so. Christmas might reason with himself in this way. He might say to himself, "the commissioners of the national debt may wish to reduce the national debt by transferring for that purpose the unclaimed dividends - at the same time, if I can help people looking for their [??] and seeking to establish just claims, I don't see that [there] can be anything very wrong in my doing so." Christmas might have reasoned in this way, and he might have [felt] that he saw no great crime in assisting Fletcher, whom he believed to be an honest man, and one who, in looking for unclaimed dividends, was endeavouring to get something for himself by the information which he afforded those [par]ties. Christmas brought his information to Fletcher. Fletcher brought it to Barber.

50. As a proof that [he] thought that there was nothing wrong in the matter[, what] did he do? He wrote to Captain Foskett for Slack's signature; and who was it that recommended the signature should be given? why Mr. Baxter, Captain Foskett's attorney. Whilst these events were going forward - [when] letters had been written by Barber and Bircham - Captain Foskett called at Barber's office every day, which [is] proof that he had no suspicion that there was anything wrong in Barber's conduct; but if any further proof [was] wanting, it was that Mr. Baxter had advised that the signature of Miss Slack should be sent. His Learned Friend (Mr. Erle) had said that Barber had brought the signature to Fletcher, and that it was taken by Fletcher to Christmas[,] and so Barber did bring the signature to Fletcher [?and] whatever might be the result, he (Mr. Wilkins) [was] inclined to think that in one part of the [transaction] Fletcher was acting honestly, and that at one time [he was] seeking to discover the real party to whom the money belonged, and when seeking that party he instructed Barber accordingly. When Fletcher took Miss Slack's signature [to] Christmas, the latter, on comparing it, told him, [?that the] signature did not correspond, and that the signature [?at the] Bank was that of a person considerably older than Miss Slack appeared to be. He (Mr. Wilkins) felt [?convinced] that Barber acted *bona fide*, according to the instructions which Fletcher gave him. Well, then, it was [stated] that Barber had written to Captain Foskett, that the signatures did not correspond, and so he did. Was not that [consistent] with the evidence? Christmas told Fletcher that the signatures did not correspond, and Barber stated to Mr. Baxter that he would give him further information when the claimant was found out. Why, all that was consistent [?with] the evidence. But he would reserve his comments upon [the] point until he came to consider the evidence of Mr. [Baxter].
51. His Learned Friend (Mr. Erle) had said that Fletcher [?went] to the Registry office at Belgrave-square. Now he (Mr. Wilkins) did not think that his Learned Friend [Mr.] Greaves (counsel for Fletcher) would have much difficulty grappling with that part of the case. He thought the [evi]dence contradictory in that point. Some of the [gentlemen] who said that they could swear to the figures made by Barber, could not swear to the writing of his [?partner] Mr. Bircham. The clerk of the bank at Bristol [?shown] some writing about which he was questioned, was [??] writing of Fletcher, but of Sanders.
52. Mr. Erle was understood to say that the evidence [of the] registrar was withdrawn.
53. Mr. Wilkins - If Mr. Barber had known that [the re]gistry contained a falsehood, he would not have had [any]thing to do with the transaction. Therefore, they [?cannot] withdraw the evidence of the registrar from the [?case. It] was stated that Fletcher had registered this death [under] a false name. Why did he do so? to deceive whom [did] he do so? If it was done to deceive any one, it was to deceive Barber. He was the only person whom it [was] necessary to deceive. This false registry was not nec[essary] for the purpose of deceiving Doctors' Commons. It was [not] necessary for the purpose of deceiving the Bank. It was [not] necessary for obtaining the probate, or for procuring stock to be transferred; and if the forging of that [??] was necessary for any purpose at all, it could only [have] been necessary for the purpose of deceiving Barber. [?Where] was that registry found? In Barber's office, bound up [with] his other papers marked "Re Slack." There was [??thing] to show that more pains were taken to deceive [?Barber] than were necessary to deceive all the rest put [together.] Fletcher, it was stated, signed his name R. Hart. It [?may] be worth the while of his Learned Friends (Mr. Hart and Mr. Stone) to look into this part of the case, and [?when] they came to this part of the case, they would [?note] witnesses swearing in a different way - one swearing [?that] Sanders was the person who signed it, and the other [swear]ing that it was Fletcher. The Jury would also [?note] that the person brought forward to identify Fletcher [??] this transaction was a person who had never seen Fletcher before in the course



of his life until he was taken to the Compter to identify him, and that was not sufficient [identi]fication. When they found witness contradicting [?each] other - one stating one thing, and another stating [?another] thing, how were they to decide. He thought that the [??] way would be to reject the testimony of both. Barber [wit]nessed nothing of this transaction, and was not [in the] slightest degree implicated in it.

54. On the 8th of [March] Barber and Bircham advertised in the *Times* newspaper [for] the legal representative of the late Mrs. Anne Slack [-] was this like concealment? Did this look like the [??] men engaged in a criminal purpose? He [under]stood that all men who undertook to reproduce[, whether in sculpture or painting, poetry or prose, [??] guilt as skulking in corners - as seeking darkness and [con]cealment, and shunning the light of day. [But did Barber] act in this way? Quite the contrary; he courted [??] and he did so because he wished to find out the [right owner] of the property, and if he wished to get information [with]out communicating a knowledge of this property, [?he would] not have taken this course. If he wished [??] would he have advertised in a paper which [circu]lated throughout the length and breadth of the [?country] and throughout the continent of Europe; and [??] chosen to invite public attention to the subject [??] advertisement in this way? To whom did this [advertise]ment direct applications to be made? - not to [??] individually, not to some person in private, or in [?secret -] application was to be made to Barber and Bircham, solicitors, Blackfriars.
55. The counsel for the prosecution [?had] put in Mr. Offley's reply as evidence against Barber. [He] (Mr. Wilkins) had called upon him to put in [??] that reply, but did they do so? On the contrary, [??] the Jury noticed how soon Mr. Erle withdrew [the] point the moment he found the answer was [?in the hand]writing of Mr. Bircham, and not of Mr. Barber. [?When his] Learned Friend (Mr. Erle) saw that the reply was [written] by Bircham, he refused to put it in; but if he had [?done so] he (Mr. Wilkins) would have shown that Bircham, [?whose] character was not impugned, took part in that [?transaction] and that in fact it was part of the business of [?the firm.] He certainly thought that unless they put in the reply [?they] had no right to put in Mr. Offley's letter, but he [?Mr. Wilkins] was sorry that they had not put in Mr. Bircham's [?reply].
56. He would now invite the attention of the Jury to [the ex]treme hardship of Barber's case. They all knew [??] of the most interesting circumstances of their [lives ??] many things that most deeply concerned them [??] were circumstances with respect to which they [would ??] difficult to bring forward any witnesses and [?be]cause they were circumstances that passed [?when no} witnesses were present. Now supposing that [?a member] the Jury went into an attorney's office. [He ??] shown into a waiting room, and told [?that the] principal was engaged, the clerk took in the [?name ??] [column 5, partly corrupted] and he was politely requested to remain until the business that occupied him was over. Well, then, [when one went into the private office of an attorney the door was shut, [??] business of that kind was necessarily private. The[n], unless by inference, it was altogether impossible that Barber could answer a great part of this case [??] it had been the fairest transaction in which a man ever was engaged - if he had been as honourable throughout this transaction as honour itself - it mattered not - he could have no witness to come forward in his behalf, and they must only judge of his conduct by inference. Fletcher came to Barber, and told him that he had ascertained that there was £3,500 unclaimed stock at the Bank, and that if they could ascertain who were the legal representatives they might get something good for themselves. All their conversations were necessarily private. Persons went to an attorney as their private adviser, and of course conversations under such circumstances were private. How, then, was it possible that Barber should answer a great part of this case, many of the points which had

been urged against him]. All he could ask them to do was to compare one part of the case with another, and to ask themselves whether one part of the [sic] might not be explained when contrasted with other parts of the transaction.

57. On the 9th of March Mrs Dorey applied at Francis-street, Tottenham-court-road, to take lodgings for a person named Slack. Barber was never at those lodgings, but they were taken for a person named Miss Slack and this was done to deceive Barber. Let them observe it was not necessary to take lodgings for Miss Slack to deceive the proctor - it was not necessary to do this to deceive Doctors' Commons - it was not necessary to do so in order to deceive the Bank.
58. On the 16th of March last, this Slack having been introduced to Barber as Miss Slack, at his office, he went with the proctor and to the Bank of England. Now who was that proctor? He was no stranger to Barber. He was a most respectable man named Wills, who had done business with Barber before and since; and to this man Barber went and introduced Mrs. [sic] Slack. Mr. Wills was asked whether this was an ordinary transaction, and he said that it was. He was asked whether Barber had acted strictly as an attorney, and he replied that he had. He was asked whether Miss Slack, the executrix, had taken any part in the transaction, and he replied that she had not - that it was not customary, and that they never did. Why, the very object of bringing an attorney was to save the proctor's time, and some considerable trouble, as it was expected that the attorney, before he went to the proctor, would have all the preliminaries arranged. The witness stated that Mr. Barber acted in the transaction as attorney [??] and that it was a mere ordinary transaction, Mr. Barber paid the probate duty, and Mr. Freshfield said that he saw the entry afterward in Mr. Barber's book.
59. His Learned Friend (Mr. Erle) said that Barber in this case had acted without inquiry at all. But he (Mr. Wilkins) would show that throughout the entire transaction Captain Foskett did not give a satisfactory answer at all, and he would be able to show that Barber had done enough to satisfy any reasonable man that his (Captain Foskett's) relative was not the person at all. It was quite plain that Captain Foskett was fencing, and that his answers to Barber were untrue. He (Mr. Wilkins) did not say that they were [??-ly] so, but that, at all events, was their practical effect. Could any thing be more different than the conduct of Barber and Foskett?
60. The letter for the transfer of stock had been produced, and that was not in Barber's handwriting. He had asked if they would not admit it to be Barber's writing. Would they swear that it was Bircham's writing? None of them would admit that it was Bircham's but some of them would admit that it was not; and yet these were the men who confidently swore to some special figures as being in the writing of Barber; and yet they would not admit the other to be the writing of Bircham, although it was as plain a hand as ever a man wrote.
61. All this investigation was public; all the acts done by Barber were public. Barber introduced Slack to Mr. Philpotts,<sup>31</sup> in order that he might go with her to the dividend office to identify her. Philpotts stated that he had had many other transactions with Barber, and had known him for five years and Mr. Philpotts was a man as well known at the Stock Exchange as any other person at the place. Many persons without due caution might say that Philpott had acted improperly; but Mr. Philpotts had done what every broker in England would have done in the same circumstances.

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<sup>31</sup> The correct spelling is 'Philpot' *per* OB2 and London Postal Directory 1843.

62. He identified this person, although he did not know [until] that moment that there was such a person in the world. He identified her for the same reason that Barber had introduced her to him (Philpotts), because she had him introduced to him by a person whom he considered to be respectable. Barber introduced Miss Slack to Philpotts in order that he might identify her, and Philpotts stated that he had identified at least three hundred persons in the same way. As a man of business he looked upon it as an every day transaction, and saw nothing in it to create suspicion.
63. A warrant was issued for the payment £1,155, and the writing on the note as to the mode in which the money was to be paid was in Barber's handwriting. On that note it was stated in pencilling, the manner in which it was wished that it should be paid. Now he (Mr. Wilkins) asked was that the act of a guilty man? Was it not altogether unnecessary that Barber should write that note? Was it not unnecessary for him to write a single figure in that note? Was it not altogether unnecessary that he should go there at all. He had done all that a professional man could be called on to do; but, with a natural gallantry, seeing the lady in mourning, and suffering from the bereavement of her mother, he gave her his assistance in getting her money. If Barber had been a guilty man, instead of coming forward in this way, he would have been glad to have kept every [memorial] out of the light. Barber did that which was altogether unnecessary, and committed himself, if he was a guilty man, by placing his own handwriting on the back of that paper. In the broad daylight [sic] - in the presence of people to whom he was well known - he did that which, if he was guilty, must have increased the risk of detection a hundred thousand-fold.
64. It appeared that £600 of this money had been paid in gold. Now, when they recollected that there were a number of clerks in the Bank whose only duty was to give gold in exchange for notes, Mr. Philpotts was quite justified in stating that it was an ordinary transaction. The sum to be paid was £1,150; and if the argument was good for anything, they should show that the entire sum was obtained in gold; but, instead of that, £600 were paid in gold, and £550 were paid in notes; besides which there were £3,500 to be got in notes. When the transaction was over and they went back they met Fletcher. Now let the Jury remark that Barber was there from the beginning; that he was at the Bank, where, if he was a guilty man, all the risk was to [be run;] that he was there when Mr. Philpotts identified Miss Slack; that he wrote on the back of the note the mode in which the money was to be paid, and he did everything in an open manner. Philpotts handed over to Barber the notes, for which he sold the stock, Barber handed over the notes to Fletcher, and there was not a tittle of evidence to show that either of the notes remained in Barber's hand.
65. He (Mr. Wilkins) had already told him that Barber, if acquitted, would leave that dock penniless. They had sold everything belonging to him; his bed, his table, and he had not at this moment a penny in the world. Other persons had their thousands in the Bank, but where, he asked, was Barber's banker to be found? They had asked the clerks of the bank at which Barber kept account if had not banked there since 1840, and the they answered that he had, but there was nothing to show that he had a £10 note in the world. Active inquiries had been made at various banks to discover what money Fletcher had, and could they doubt that similar inquiries had been made with respect to Barber? Wishing to impugn Barber's character, there could be no doubt that they had made every inquiry to ascertain what money he had, and there was nothing to show that Barber had ever received one fourpenny piece of this money, or anything that would give a clue to those suspicions.
66. Then it had been stated for the prosecution that Barber and Fletcher had determined that these notes should be changed for gold. Why there was not a tittle of evidence to show that

Barber had anything to do in proposing this. All the evidence they had on the point was that of Mr. Philpotts, and all he remembered was that he heard it talked over that one of the thousand pound notes should be changed for gold; but when they came to test the accuracy of Mr. Philpotts's memory, he had no distinct recollection of the matter.

67. Then they had it proved that Mr. Dorey had showed a thousand pound note to his shopman, but had they any proof that he had ever shown a thousand pound note, or even a ten pound note, to Mr. Barber? He was a man whose assistance was altogether indispensable - who went to the Bank - to the proctors - who stood in front of every danger; that man was now penniless - but he would not be penniless whilst] they (the Jury) lived to rescue him from his unmerited situation. In February, Sanders and his wife came to London and changed a thousand pound note, and lodged the money in the bank at Bristol, and the attention of the bank was awakened by the circumstance.
68. In November, 1843, Mr. Freshfield, the solicitor to the Bank, called upon Barber, and spoke to him on the subject of the those transactions. He (Mr. Wilkins) had been called the other day a daring advocate - whether that had been said of him as a reproach or not, he (Mr. Wilkins) could not undertake to say, but if it was meant by his being called a daring advocate that in defence of his client he respected no interests, and looked without distinction to persons or circumstances - if that was meant by being a daring advocate, he was proud of the title. High as Mr. Freshfield stood in society, valuable as he might be as a supporter, or formidable as an opponent, yet he (Mr. Wilkins), in the fearless and conscientious discharge of his duty, would deal with Mr. Freshfield as if he was the veriest Lazarus as ever crawled upon the earth.
69. If Freshfield was his own father, and had acted in the same way, he would speak of that father as he now intended to speak of Mr. Freshfield. He would, then, candidly tell the Jury that he did not believe Mr. Freshfield, but he would tell them what he believed, and it was this -that Mr. Freshfield had acted in a way that was not creditable to himself, and had given evidence which would follow him as a reproach to the close of his life. Why was Mr. Freshfield allowed to go home and put together a well-digested and artistical statement, arranged in a manner calculated to render that statement the most effective? Why, he asked, did Mr. Freshfield, who, as a lawyer, must know that the *suppressio veri* was as bad as absolute falsehood, why did he suppress that very point in his evidence that went in favour of Mr. Barber? When asked whether Mr. Barber had expressed any indignation at the suspicions cast upon him, he said that he had. But if they had a daring advocate, thank God also, that they had a daring Judge, who would not allow any respect for persons to stand in the way of justice. When Mr. Freshfield made that statement, he saw his Lordship take a note, and ask Mr. Freshfield why he had suppressed that fact, and when Mr. Freshfield was pressed whether he had made the suppression wilfully, he saw the alternative he had to adopt - he paused for a while before he gave his reply, and then he answered that he had suppressed it wilfully. And yet Mr. Freshfield did this in order to crush a member of his own profession, and one who, six months ago, stood as high in that profession as he did himself, and a man who was known to some of the brightest and noblest spirits in the land; and who, six months ago, possessed every enjoyment that competence, and taste, and literature, and society could give him. When Mr. Freshfield gave that evidence did he think of the advantage it was to a man to possess a character in society? Did he reflect what [column 6] a wretched thing it was for a man to have no friend to console him in his lonely hour of misfortune? - did he reflect that by means of that evidence that man might be hurled into the gulph of perdition? And what could they think of the man who admitted that he had wilfully withheld a part that might be a means of rescuing his unfortunate client from that gulph? He (Mr. Wilkins)

would not pretend to withhold his feelings at such conduct. He did not possess that sycophantic feeling which often constituted the sentiment of the drawing-room - he would not yield to that degrading maxim of society which made a man call that honourable which he knew to be dishonourable, and call that gentlemanly conduct which he knew to be ungentlemanly - and, even at the risk of offending such a man as Mr. Freshfield, he would say that that suppression of that part of his whole statement, most vital to the interests of Barber, proved that he had put his statement together in the artistical manner which he did, and showed that he was afraid to trust to his memory to recapitulate it.

70. It was true that Mr. Freshfield did call on Barber and talked to him of the forgery, but it was not true that Mr. Freshfield believed that Barber was guilty, or that he believed him to be implicated, or that he looked upon him as a criminal. He had Daniel Forrester at the door, and if he believed Barber guilty, would he not have given him into custody - would he not have taken care that Barber should have no chance of escape?
71. Instead of that he went away, and it appeared That he was ignorant that Forrester had instructions to watch the office of Barber. Did Mr. Freshfield, the solicitor of the bank, the guardian appointed to watch over its interests, did he believe, he, in some sort a government officer, did he believe Barber was criminal and take no steps to place him in custody? Did he believe that Barber had committed a crime so great - did he believe this and allow Barber the opportunity to escape? Why, such a supposition was impossible. It was not until three weeks after this that Barber was taken up and treated as a criminal.
72. His Learned Friend (Mr. Erle) had stated that the Lord Mayor had refused bail, and that Barber had consulted with Fletcher for three-quarters of an hour before he placed him in the witness box. Now, suppose that on account of the value he set on his great skill, that Barber sent for his Learned Friend (Mr. Erle) and said to him, "Fletcher can clear me." He (Mr. Wilkins) did not think that his Learned Friend would call Fletcher into the witness box without first ascertaining what he was about to do; and he certainly did not think that he would call him into the witness box without a moment's preparation. Then, said his Learned Friend, the contest would be on the question of guilty knowledge. The Jury could not look through the windows of the souls of men and see what was passing there, what were the motives that were actuating men. No human being could search the motives of men, but they knew how prone human nature was to mistakes of that description, and they ought to be slow before they criminated Barber. They could only test motives by his acts, and let them examine those from beginning to end and see whether Barber acted with a guilty knowledge. From beginning to end they would find that every part of his conduct was open and straightforward, and was done in a business-like manner. They would see that he had in every instance acted as a professional man, and in a way befitting his character as an attorney.
73. When a person answering the description of Miss Slack was found, what right had Barber to go further? A person was found answering the description in all respects. What sort of person did Captain Foscett describe his relative to be? A person twenty-seven years of age, that she managed her own affairs, and received her own dividends, and that she had not any stock unclaimed. Now surely this person did not answer the description of [sic] person which Mr. Barber was looking for. Barber said that Anne Slack must have been at least forty, and the person introduced by Fletcher appeared to be sixty years of age.
74. After some further comments on his part of the case, the Learned Gentleman said his Learned Friend (Mr. Erle) had said that after the Jury had satisfied the objects of their inquiry, he trusted that they would temper their judgement with mercy, and he called on

them to do so. Nobody was more a friend to the divine attribute of mercy than he (Mr. Wilkins) was, and they must feel every day how much they needed the exercise of that attribute from the hands of Him who made them. He did not want to depreciate the value of mercy, but he would take his stand on higher ground. He would not stoop to steal a verdict from their pity - he would not stoop to send that man from that dock with the films of doubt and suspicion clouding his future life. He asked a verdict from their justice, and from their justice alone - and if he should be the humble instrument of restoring that man (pointing to the dock) to society, he would be amply repaid for all the anxiety and trouble he had endured on his account, and would to his latest hour feel that he had not lived in vain.

75. The Learned Counsel then proceeded to go through the evidence *seriatim* of the witnesses for the prosecution, on which he commented in detail with great force and ingenuity, and ably argued that it was perfectly powerless to prove the existence of a guilty participation on the part of his client.
76. He read at length the correspondence with Captain Foscott, which has been already published, and contended that Barber's conduct in the transaction was a *bona fide* endeavour to discover the real owner of the property in question. Mr. Wilkins then proceeded to comment upon the evidence of Mr. Tomkins, Mr. Page, and Mrs. and Miss Neville, who proved that the lodgings were taken, and, in fact, everything done, before Barber made his appearance. Why should he be considered as less imposed upon than any of those witnesses?
77. Mr. John Wills considered the transaction the most ordinary one that could possibly take place, but where were all the papers sent to? The probate and all the various papers were sent to the office of Barber and Bircham. Why, if Barber thought he knew he was engaged in a guilty transaction, would he have suffered those papers to be sent to him or to be in his office? Would he not have procured Mr. Christmas or some other person to take charge of them, and not have allowed them to remain in his possession, when they afforded the only evidence against them? But to proceed with Mr. Wills's evidence, he said he firmly believed the lady to be Miss Slack, and what reason had he (Mr. Barber) for not believing her to be Miss Slack? Mr. Wills said he depended upon the introduction he had received. He depended upon the respectability of the person who introduced her to him; and why should not Mr. Barber have depended upon the respectability of the person who had introduced her to him?
78. Mr. Weldon, the clerk in the drawing-office, deposed that the probate of the will was left at the bank, and a letter also, which was sent by Mr. Bircham. Now this was done all in the way of business by the firm of Barber and Bircham, and yet they had the important piece of evidence that the words 17th of February were written in that letter by Mr. Barber. He (Mr. Wilkins) did not deny that; on the contrary, he admitted it, and not only admitted, but relied upon it. It only the more plainly and clearly showed that the transaction was a regular one so far as regarded his client.
79. He then went through the evidence of Mr. Noble, whom he styled "the identifier-general to the Bank of England. " He begged the Jury to take with great caution the evidence of Mr. Noble to the identity of Mrs. Sanders, although he should not take the defence of Mrs. Sanders out of the hands of his Learned Friend, Mr. Stone, but that identification argued more for the courage than the discretion of the witness. But he said Mr. Barber was then with her. Certainly he was. They do not deny it; on the contrary, they relied upon it. He was there on the performance of his business.

80. Mr. Wilkins then commented upon the evidence of a number of the bank clerks, and as to the fact of Mr. Barber taking a large quantity of gold away in a bag, he thought his Learned Friend, Mr. Erle, had laid a good deal too much stress upon it.
81. At this period, a quarter to two o'clock, the Learned Counsel begged to be allowed to retire for ten minutes to refresh himself as he felt greatly exhausted.
82. Mr. Justice Williams acceded, and the Court adjourned for ten minutes.
83. On the return of his Lordship and the Jury, Mr. Wilkins resumed. He said that when they retired he was about to call their attention to the evidence of a stockbroker, Mr. Philpotts. Having read and commented upon Mr. Philpotts's evidence, from which he contended the most satisfactory proof of Mr. Barber's innocence would alone be inferred, the next point was the evidence adduced to support Mr. Philpotts; and here he felt it his duty to comment with severity upon the mode pursued by the prosecution. The Legislature had provided that prisoners should be supplied with copies of all the depositions taken against them before a magistrate, on payment of a moderate sum; and their object in making that provision was, that the accused might have an opportunity of defending himself by being made fully acquainted with all the evidence that was to be adduced against him. How had the prosecutors in this case acted? Had they carried out the intentions of the Legislature, or had they, on the contrary, produced witness after witness, who had all been in attendance before the magistrates, and yet had not been examined. These witnesses were kept back until the trial, and then they were started upon them (the defendants) whilst they were necessarily unprepared to meet their assertions, or to test their accuracy. How was it possible to test the accuracy of persons who swore to trivial circumstances which had occurred years back, without some previous knowledge of what they were about to assert, or some opportunity of recollecting or referring back to those dates. He implored the Jury to receive with great caution the evidence of those witnesses to circumstances, not that affected his client, but that their manner tended to excite prejudice. To return to the evidence itself, what was proved with regard to the statement made by Mr. Barber? When first charged - when first spoken to on the subject, he made a statement, and from that statement he never varied. If he had been conscious of guilt, that could not be the case. Truth, and truth alone, was consistent with itself. Falsehood was never consistent. But he had a further charge against the prosecutors. Finding their case too weak, they had endeavoured to strengthen it, and they brought forward that lump of stupidity and obstinacy, Mr. Hyatt, for that purpose, but fortunately his Lordship disallowed them.
84. [Mr. Wilkins then read at length the evidence of Mr. Freshfield, on which he commented with great severity.] What did the Jury think of that gentleman's written note of the conversation he had with Mr. Barber? Did they believe, then, it was a mere ordinary note, or did they not think that it was as carefully and artistically prepared as the brief of his Learned Friend on the other side? But, even according to Mr. Freshfield's statement, Mr. Barber merely acted with such reserve as might naturally be expected from a person who had a serious charge suddenly opened up on him. It was natural he should wish to gain time, but still he offered Mr. Freshfield every information then in his power. He offered him his books for perusal, and he told him he had all the papers in the case, which were accordingly found in proper order, complete and constructed, three weeks afterwards. He told Mr. Freshfield even some of the particulars. He said he had nothing by the affair but his bill of costs; and he further mentioned something about having received £80 for stamp duty, which on examining his books was found to be correct. Now this was all he had received - his bill

of costs, and no more. If he had shared any of the plunder where was it? They (the prosecutors) knew his business, and if he had any more let them show it.

85. Having now called their attention to, and made all the observations he considered necessary upon the evidence laid before them, he would tell them what appeared to him to be the result. In all the movements that were made, Barber never appeared to have taken a part, he was never seen. Fletcher got the information from Christmas, Barber was never seen by him. Fletcher was seen at Abbot's Langley, Barber was not. Fletcher was traced in London, Barber not at all. Fletcher gave all the information on which Barber acted, and Barber acted throughout in the most public manner, so that he would naturally be the very first person liable to be called upon for explanation. He wrote to Captain Foskett. He acted regularly and professionally, and everything combined to show that he was an innocent instrument in the transaction. He had only known Fletcher professionally, and at that stage of the case, irregular as it was, he would waive their regularity, and he defied and dared the prosecutors to show even then that he had any other than a professional acquaintance with Fletcher. He dared them to show any private intimacy between them.
86. With these remarks he would conclude, and he only prayed the Jury to remember the awful responsibility that rested upon them. The Learned Counsel concluded at three o'clock a speech of nearly five hours duration, by imploring the Jury to invoke the light and aid of Heaven to enable them to fulfil their duties, and to pray that God might inspire them with the spirit of justice.

[ends]



## Appendix 14 Wilkins Speech for the Defence in *Slack*, from his book

### Speech as Published in Wilkins and Gregory<sup>32</sup>

THE CASE

OF

WILLIAM HENRY BARBER,

JOSHUA FLETCHER, WILLIAM SANDERS, GEORGIANA DOREY,

AND LYDIA SANDERS, CHARGED WITH THE FORGERY

OF THE WILL OF ANN SLACK

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The case for the prosecution having been concluded, Mr WILKINS addressed jury as follows-

1. MAY IT PLEASE YOUR LORDSHIPS, AND GENTLEMEN OF THE JURY, - we are now entering upon the third day of the investigation of this most important case, and, judging from the appearance which this court now presents, the public interest in this inquiry has in no measure abated. I would fain believe, that those who have crowded this place, day after day, have been actuated by higher and better motives than the mere desire for pastime or amusement. If so - if they have come to witness this interesting scene in the great drama of life, for instruction - they cannot have come in vain [-] they must have learned many important lessons. One would hope that no British subject can have watched the progress of this trial without gratitude for the privileges that he enjoys, and without a determination to evince that gratitude by right use of the privileges, to yield to those laws which attach such immense importance to the happiness and rights of all, a ready and grateful obedience. To myself, I say it without affectation, proceedings connected with these inquiries, have furnished feelings of exultation in the consciousness of living in a land so distinguished for the purity of its laws, and the dignity, patience, and jealousy, with which those laws are administered.
2. To see twelve gentlemen, like yourselves, day after day, and night after night, without a murmur or repining, foregoing the advantages of your various occupations, relinquishing the comforts and sweets of home, devoting yourselves with the most untiring diligence to this painful investigation, to witness those qualities reflected from the Bench - such an exhibition affords me the greatest support and consolation in my trying task, and shows to me the force of an assertion of one of the ablest essayists of this land, that all our noblest institutions - the security of the throne, the lustre of the coronet, the grandeur of the palace, the peace of the cottage - point to the jury box. Should there be in this auditory one, who, from other climes, has come to make himself acquainted with the constitution of our country, to ascertain in what the famed greatness of Britain originates, he will discover that it proceeds from the consciousness of security which every British subject possesses in his possessions, be they great or small, and that security rests upon the assurance that as long

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<sup>32</sup> Charles Wilkins and H. Gregory (1844) *The Queen v. Barber, Fletcher, and others. The Speeches of Mr. Wilkins, in Defence of William Henry Barber*. London: John Crockford & Son, 25.

as his rights are to be measured and weighed by twelve of his neighbours, oppression will be powerless, and tyranny seek in vain to invade his possessions.

3. Gentlemen, I must of necessity occupy a considerable portion more of your time. My duty, like yours, is a fearful one, but it will be pusillanimity in either of us to desert it. God knows, I have not courted the responsibility now devolving upon me, he who can do so must either underrate the task he has to perform, or much overrate the abilities that he may bring to its execution. Since the commencement of these inquiries, by day or night has my mind being pressed down with the weight of apprehension.
4. I feel that it would be an insult to you to apologise for that occupation of your time which my duty demands. It would argue a mistrust in your diligence and humanity which have been so fully indicated by your conduct up to the present moment. Gentlemen in this case, as in the former, I shall, in the first instance, answer the opening address of my learned friend who conducts the case for the prosecution. I shall then, upon the [26] evidence, and conclude with those inferences that the circumstances may seem to demand and justify. I know not what may be the policy of my learned friend - what his intended line of conduct. I know his ability, his great experience. I have often had occasion to admire the tact and skill for which, in the profession and out of it, he is proverbial. I also know how dangerous the most powerful qualities of the mind may be to the interests of truth, how destructive of innocence when in eager pursuit of conviction. Could I be assured that the same candour and honesty of purpose would be displayed in this case that did so much honour to the head and heart of him who led the former prosecution, I should entertain no fears for the result of this trial.
5. Gentlemen, I beseech you to watch and note every sentence and argument of my learned friend with as much diligence and criticism as he is at this moment bestowing on my observations. Take care to distinguish between the ingenious suggestions of an astute advocate seeking to justify the prosecution in which he is engaged, and the fair and obvious reasonings of candid and honest minds in the pursuit of truth.
6. My friend's opening address was, I will do him the justice to say, a plain unvarnished statement, that may be an earnest of his future intentions, or it only serve as a snare to throw his opponent off his guard, and to conceal the real points of his attack to a period when he knows that reply is impossible, and exposure of fallacy precluded by the rules of law.
7. Gentlemen, no doubt some of you were present during the trial of the former case. If so, you must remember with delight the observations upon the duties of counsel for the prosecution made by the learned Attorney-General. His memory, gentlemen, will long be cherished, and often quoted by every member of the British bar. He was great as an advocate, he stood prominently forward in the first ranks, but he was greater still for all those qualities of the head and heart that adorn the man. He detested that policy which, in a prosecution for the Crown, sought conviction as its only aim. He abhorred that reputation for skill and craft which is purchased by ending in the triumph of wrong, the oppression of the weak, or the conviction of the innocent. On the occasion to which I before referred, he told the jury that he felt it to be his duty not to lie by for a reply, not to keep back, until the accused should be powerless, any point or charge that should be urged

against the prisoner. He told you that such conduct he regarded as cruel and unjust, and utterly inconsistent with the dignity and honour of the government whom he represented. I seek not to disparage my learned friend, nor shall I presume to dictate to him, but I will take leave to tell him, with the utmost deference, that he will do well to follow so bright an example - by doing so he will acquire a reputation that will yield higher honours, and far more permanent advantages, than that of the mere tactician or skilful sophist. Let him become the advocate of justice, not the advocate of an active attorney. The approval of the one will yield eternal peace, the approval of the other, unaccompanied by the former, will be in effect his bitterest reproach. It has been said, by a learned personage, that it is sweet to wallow in the luxury of the last word, but if that luxury consist in making that last word destructive to others, I have no stomach for such luxury.

8. Do not suppose, gentlemen, because I put you thus on your guard, that I am apprehensive of the consequences of inquiry - no, full, free, unfettered inquiry, is the boon I asked for, my only fear is, that that inquiry may be limited and stifled, when it would lead to my client's acquittal.
9. You will have observed, that from the beginning to the end of these cases, I have not sought to avail myself of any technicality - I have taken no legal objection. I have not sought to stop inquiry upon the threshold. I have fearlessly, throughout, pressed you onward in your scrutiny, because my belief in Mr Barber's innocence was too strong to allow me to seek an escape for him from these accusations, with the mark of shame or the stain of suspicion upon his name. My learned friends, in discharge of their duty in defence of the other prisoners, have urged objection upon objection, point upon point, to effectuate the escape of their clients. I find no fault with them, and impugn neither their discretion nor their ability, it was their duty to do so. But, at the special request of my own client, I have not, in one instance, stooped to such an expedient. I think I may venture to say, that no parallel instance of confidence in the facts of the case can be found in our criminal history.
10. When I heard my learned friends who defended Mr Fletcher seek to stop this case *in limine*, I was fearful lest they might succeed in their application, and was rejoiced, and so I am sure was my client, when his Lordship refused the application. That refusal could only have protracted the anxiety and misery which have haunted him by night and pursued him by day, from the first moment when these proceedings were instituted. And, [27] indeed, could he escape altogether from these charges by technicalities, such an acquittal, I am sure, would be, to him, no triumph, but a real disaster.
11. But, gentlemen, let us come to the speech of my learned friend. He began by telling you the nature of the charge, and here I may as well dispose of six counts in the indictment, all of which charge Mr Barber with forgery. I am sure it will be admitted at once that these counts cannot be sustained, as no evidence has been adduced to justify the charge of forgery. No doubt the other counts, if supported by the evidence, urge against Mr Barber one of the highest offences known to the laws of this country. much as I have felt for him, - and God knows my anxiety has produced sleepless nights and anxious days, - I know not if I may be exceeding the limits of my duty in the declaration I am about to make, - my solicitude has been produced by a deep conviction of his innocence I, gentlemen, in the

presence of him who knows the secrets of all hearts, I solemnly publish my conviction of his innocence. Nevertheless, gentlemen, much as I have felt for him, that feeling shall not prompt me to appeal to motives and objects that may interfere with the discharge of your duty.

12. I say, if they make out these charges against him, your oath and society require he should be convicted, but on the other hand, looking at the consequences of your verdict, remembering that conviction will consign him to shame and to sorrow for the rest of his days, beware, Oh! beware, last cunning, and skill, and misrepresentation, should lead you today to a conclusion that tomorrow may be followed by bitter remorse, and the painful sense of having inflicted an injury for which you can never atone.
13. Gentlemen, my client is charged with forging the will of Ann Slack, in some counts with uttering that will, knowing it to be forged, in others with being an accessory before the fact. I do not despair of convincing you, before I sit down that he is entitled to your acquittal upon all those charges.
14. My learned friend, in the commencement of his speech, gave you a history of the property purporting to be bequeathed by this will, he stated that on the death of the father of Miss Slack, in the year 1815, Mr Hulme became one of the executors under the father's will, that Mr Hulme had been a partner in the firm of Jones, Lloyd [sic], and Company, and that the affairs of the deceased's estate were wound up in the year 1824, that in that year Mr Hulme invested in the Bank the money due to the various claimants under the will in the name of Ann Slack, of Smith-street, Chelsea, £6000 in the Reduced Annuities, and £3500 in the 3 per Cent Consols, that Miss Slack, having the most unlimited confidence in Mr Hulme, gave him a power of attorney to receive the dividends, and that he did so receive them until the year 1832, she drawing the money as she wanted it, that on the death of Mr Hulme the power of attorney ceased. Miss Slack then became manager of her own affairs, and received her own dividends.
15. And here, gentlemen, is an instance in the conduct of Miss Slack, showing how dangerous it is to form an opinion or found a charge upon any isolated act or mark of eccentricity in the character of any person. Suppose, for instance that Miss Slack were upon her trial for having fraudulently possessed herself of this stock previous to the year 1832, and that it should be urged, as presumptive evidence of her guilt, that for 12 years, although she managed her own affairs, and was possessed of an income by no means large, she had never received or asked for any portion of her dividends, or sought to dispose of the original stock, and suppose, in addition to this, that the reason assigned for such extraordinary inactivity should be that Miss Slack had forgotten that she ever possessed such a sum. I should have liked to have heard the reasoning of my learned friend on the part of the prosecution upon such a state of facts as this. Would he not have said, the story of Miss Slack was too ridiculous to deserve a moment's respect? Would he not have urged that her allowing so large a sum to lie dormant for so great a length of time was strong proof presumptive that she feared to approach the Bank, and dreaded investigation and inquiry? Do not mistake me, gentlemen, I do not for one moment mean to attribute anything fraudulent or improper to Miss Slack. I believe her to be a very respectable person - a lady of high character,- but I have invited your attention to this to show you how

absolutely necessary it is to inquire into character, and time, and place, and circumstance, before you make up your minds upon what may appear disparaging or prejudicial to others.

16. My learned friend told you the manner in which unclaimed stock is transferred to the commissioners for the reduction of the national debt [sic], and that if at any time the rightful owner appear, the dividends are re-transferred. But my learned friend has with great haste passed over the preliminaries to be accomplished before that re-transfer can take place. Parties are to be examined, affidavits to be drawn up, embodying the [28] facts furnished in the answers to questions proposed.
17. The will has to be proved, the probate is to be left at the Bank for the inspection of the Bank solicitors, and all this is of necessity to be performed by an attorney, and, gentlemen, after all that has been done by the solicitors for the prosecution, whose bitterness towards Barber is to me inexplicable, although their spies and scouts have been sent in every direction, - notwithstanding the desperate efforts prompted by the fears of that poor woman [pointing to Mrs Dorey], in the face of the evidence of Christmas and the confessions of Griffin, I dare them to adduce one single act of Barber's irreconcilable [sic] with the conduct of a respectable attorney. Let them, if they will, produce the whole of what they are pleased to call Mrs Dorey's confession.
18. They have suspended Christmas. Let that suspension be held *in terrorem* over his mind, let them call him again into the witness box, let them push inquiry as far as hopes and fears will reach - I dare them to produce one fact, to quote one word, or exhibit one line, that will tend to criminate Mr Barber.
19. Why have we heard nothing of Mrs Dorey's confession in this case? She is upon her trial, she has taken, beyond all doubt, an active part in furthering, wittingly or unwittingly a forgery which is the subject of this indictment. If Barber had taken any criminal part in the matter, she must have known it. How, then, does it happen that in this case not one word of Mrs Dorey's confession is put in? Can there be any other answer on this, that that confession in no way implicates Mr Barber? Let me not be told what Mrs Dorey might say can be evidence against no one but herself, else why was her confession put in the former case? In that, as in this, legally speaking, the statement could not be evidence against either of the other prisoners. I therefore, gentlemen, leave you to conjecture why no portion of Mrs Dorey's confession has been read in evidence.
20. What is the secret of all this bitterness towards Barber? Are they visiting upon his head the consequences of their own scandalous negligence? But for that negligence - the abuse of proper inquiry and precaution - such frauds could never have been affected. It may be, as often the case with those in private life, that they hate the instrument through whom their own misfortunes [sic] has been brought to light. Certain it is, whatever maybe its cause, that all reasoning with them in Barber's behalf is treated with contempt, and every asseveration of his innocence provokes a smile of derision. They have reduced him to beggary, and when your verdict of acquittal shall be pronounced that poor fellow goes out of gaol without a bed to lie upon, without a penny to buy a morsel of bread. Gentlemen, to proceed with my learned friend's speech.

21. In the year 1843, the will by which the property passed was produced at Doctors' Commons. By whom? By Barber. It is produced at the proctor's - by Barber. The probate is left at the Bank [sic] - by Barber. All this time the man who had instructed him - the man whom Barber regarded as one of the most respectable men in this metropolis - Fletcher- keeps both his name and person from observation. The very publicity of Barber's proceedings, with fair and candid persons, must argue strongly in favour of his innocence. It is not because a man may be promoting the grossest fraud, that he is necessarily to be presumed a participator in that fraud. The most honourable man that ever lived may, without his knowledge, be made the means of inflicting the deepest injury, and there is no person more liable to impositions such as that described by my friend in his opening, than attorneys, as they do and must act in reliance upon the integrity of their clients.
22. How are we to test the guilt or innocence of another? Not so much by the act as the circumstances under which the act is performed. If we find the wrong-doer courting observation, fearlessly submitting to investigation and inquiry, calling the attention of those by whom he is known to his conduct, do we not come to the conclusion that he himself must be unconscious of the wrong that he is inflicting, and that he must be the instrument of some designing person secure in his secrecy, and hiding from the light?
23. So here we find Barber, it is true, aiding in a fraud, but how? Surely not knowingly, or he would have sought concealment, and is it not fair to presume that he was acting *bona fide*, when it is admitted on the part of the prosecution that Fletcher was his client, and had been so for many years, and when we find several papers and documents in Fletcher's hand-writing containing information and instructions, bound up with all the papers and documents connected with this case endorsed in Barber's own handwriting, as being the papers connected with Slack's estate? The probate we were told was obtained on the 3rd of June.
24. My learned friend told you that one of the proofs of Barber's guilty knowledge was the suspicious character of the will itself. Aye, is that so? Did my learned friend, in his zeal to convict Barber, discover that he was at the same time con-[29]victing his own clients? He told you that that will was enough to excite the suspicion of anyone. How happens it that did not excite the suspicion of Mr Freshfield, the attorney, who is employed to protect the interests of the Bank? The probate of the will was left at the Bank for his inspection, there can be no doubt that he did inspect it. Did it excite any suspicion in his mind? If so, he took extreme pains to conceal it. For what purpose is the probate left at the Bank of England? - that it may be read, that the Bank authorities may make themselves acquainted with the handwriting of the testator, with the character and circumstances connected with the claimant, and to ascertain whether the party claiming is entitled.
25. If, as my learned friend has asserted, this will bore upon the face of it such badges of fraud that it must have provoked the suspicion and inquiry of any professional man, why then let the directors of the Bank seek some other legal advisor, - let them give Mr Freshfield a retiring pension, and avail themselves of talents unimpaired by time or labour.
26. But much as my client may have reason to complain of want of kindness or candour on the part of that gentleman, he will not join in any censure against him upon the score of

incapability. There are too many witnesses groaning and sweating under a wearied life in her [sic] Majesty's colonies to vouch for the activity and zeal of the Messrs Freshfield, to admit of any reproach upon the score of neglect.

27. But what shall be said to explain the conduct of the parties at Doctors' Commons? Mr Wills, a gentleman engaged in inquiries of this description from his youth upwards, saw nothing in the will to provoke inquiry or excite suspicion. He himself has described it as a fair and straightforward transaction. Let not my learned friend, then, persevere in his charge against Mr Barber, without, at the same time, involving in his accusation the legal advisors of the Bank directors, and those who had preceded them in the preparatory examination.
28. My learned friend has admitted that the lady, whoever she was, was introduced to Mr Barber as Emma Slack. Good God! gentlemen, can my learned friend make such an admission, and yet treat Barber as a guilty man? Why should she have been so introduced, but for the purpose of deceiving him to whom she was so introduced? Alas! gentlemen, for my client, it is in perfect keeping with that cunning that has been exercised throughout to impose upon him. I undertake to shew you, in the course of my observations, that far greater pains have been taken to blind and mislead him than to impose upon others. She was brought to him clad in all the outward habiliments of mourning, lodgings had been taken for her in the name of Slack, in that name was she introduced to Barber's office, - misled by that introduction, he introduced her, in that name, to the parties at the Bank, to vouch for the sincerity of his belief, he cited Mr Philpott<sup>33</sup> as a witness to the transaction, - in her name was the stock sold out, - to her was the money paid, - and all this, with the probate of this questionable instrument the only voucher for her claim.
29. Gentlemen, you have been requested by my learned friend to discharge from your minds anything that you may have heard out of doors. My sincerity in echoing that petition I am sure will not be disputed. The enormity of the offence charged, says my learned friend, requires, on the score of humanity, that the proof should be clear. Be it so, and I inquire and pause, that you may have time to reply. Is the proof clear in this case? Can any of you say that the requirements of humanity have been met? But, gentlemen, there are higher claims upon your verdict than those of mere humanity, - claims pointed at by the oath which you have taken. He who reminds us hourly of our proneness to error - in whose presence, in the way of justice, none shall obtain salvation, - calls upon us to exercise towards each other charity, and to pause before we convict.
30. Let us look, gentlemen, at the description which my learned friend has given of Mr Fletcher. He has told you that Fletcher was a member of the medical profession, - that he moved in a respectable sphere, that he has been a client of Barber's since the year 1838. That Fletcher is a wealthy man, has been proved by his own Banker. Were not all these circumstances calculated to create confidence, and to prevent even the approach of suspicion? I grant you, had Fletcher, as a stranger to Barber, proposed to him the completion of arrangements such as those already described, one might well have expected caution and jealousy, but, treating this as one transaction out of many, involving far greater

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<sup>33</sup> The correct spelling is 'Philpot' *per* OB2 transcript and London Postal Directory for 1843.

interests, I cannot help thinking that common charity may fairly infer that neither prudence nor honesty has been outraged by the part that Barber has taken in this proceeding.

31. My learned friend has told you that you have a right to expect discretion and caution from Mr Barber, as he is an attorney. Let that fact lead you in all your inquiring throughout this case. It is true, Barber was Fletcher's attorney. Had [30] he not been so, then would his conduct, indeed, have justified suspicion; but availing myself of that admission superseding the necessity of my calling evidence to the fact, I ask you to place your finger upon any transaction to which your attention has been called, and state whether any portion of Barber's conduct consists not with his professional character. In point of fact, supposing this to have been an honest enterprise, what has Mr Barber done that might not have been performed by Mr Freshfield himself?
32. But will not the manner, time and circumstance, weigh with you? The probate of the will - the various witnesses produced - the affidavits - all are in handwriting either of Mr Barber or his partner. A portion of the business is proved to have been done by Mr Bircham. Yes, gentlemen, they ask you to believe that my client, in the concoction and completion of an enormous offence, called to his aid, when that aid, mark you, was perfectly unnecessary, his partner, upon whom the counsel for the prosecution has not ventured [sic] to whisper a reproach, must he not have known that Mr Bircham's curiosity would be excited to all matters conducted in their office, and could he hope that anything short of the fullest explanation would satisfy his inquiries?
33. Let me entreat you, gentlemen, never to lose sight of the fact, that Barber has admitted by my learned friend, Mr Erle, to have been the attorney of Fletcher. But my learned friend says that Barber and Fletcher had been well acquainted for some years, that they have been acquainted, as my learned friend and his clients may be acquainted, is true. But, if it be meant that their acquaintance proceeded one jot beyond that of attorney and client, I dare my friend to the proof. Upon the absence of that proof I ask you to pause, for it is utterly impossible to believe that these men could have been conspirators in fraud and felony, without intimacy and frequent communion.
34. And yet the promoters of this prosecution have never been able to show the slightest proof of familiarity. They have had in their pay two of the most vigilant and intelligent police officers in Europe. That these officers have availed themselves of every opportunity, that they have exercised sleepless vigilance and the most untired perseverance, let the evidence of this case testify. They have made inquiries from all who are known to be acquainted with Barber, they have dogged his footsteps in his goings-out and his comings-in, and yet have they not been able to produce a fact, or one witness to shew that Barber and Fletcher were ever seen together, but in Barber's own office.
35. Gentlemen, you were told by my learned friend that Mr Freshfield called upon Barber three weeks before his apprehension, to apprise him of the discovery of this forgery. On that occasion he told him that there could be no doubt of the fraud that had been committed, he announced to him his intention of laying the facts before the Treasury, and that proceedings would immediately be taken to bring the guilty parties to justice, of whom he



more than insinuated that Mr Barber was one. Mr Forrester has told you that during the whole of three weeks he was watching Fletcher's movements.

36. Gentlemen, had Barber anything to dread, any proofs of his guilt to remove, any partners in the fraud to forewarn, would not some evidence of his desire to evade and escape from the consequences of his crime, have been adduced before you today, and yet Forrester tells you that Mr Barber, during the whole of that time, attended at his office regularly and without intermission, and that his conduct throughout indicated the most perfect unconsciousness of the existence or approach of danger. And at the end of three weeks after his apprehension they find every letter, memorandum, and document, connected with this affair, filed in his office, and labelled with the name of Slack, in Mr Bircham's handwriting. If, then, my learned friend meant to insinuate that there was an intimacy between Barber and Fletcher, ask him, nay, more, I demand from him, in the name of justice and of truth, where is the evidence to sustain this assertion? "Echo answers, where?"
37. My friend, Mr Erle, then proceeded to say that Mrs Sanders and Mrs Dorey have been acquainted with Fletcher for several years. Can he say the same thing of Barber? No. Mrs Dorey was not seen by him from beginning to end, and Mrs Sanders nowhere but in his own office, and never but in the assumed name and character of Miss Slack. In the autumn of 1842, we are told that Christmas had the means of knowing what stock was about to be transferred. Christmas admits that he and Fletcher were upon intimate terms, and he has stated this morning, in answer to an inquiry from his Lordship, that he never made any communication to any other living man respecting the property in the Bank standing in the name of Miss Slack.
38. Christmas admits that to his knowledge he never saw Barber before in his life, could this have been the case had Barber and Fletcher been partners in these nefarious practices?
39. It seems that the all [31] important secret at the Bank was the amount and description of the stock. The Dividend Book is published annually, giving the names of claimants as well as of the party who has been in the habit of receiving the stock, but *the amount* was secret. That was known to Christmas, and imparted by him to Fletcher. I think you will be of opinion that the information given by Fletcher to Barber was scanty and imperfect, and that will in some measure account for the unsatisfactory and ambiguous answers which Barber gave to his inquirers – at least it is certain, had Fletcher's object been to deceive Barber, that it would be necessary to suppress his object – and the means by which the object was effected. You will do well, gentlemen, to contrast throughout the conduct of Fletcher with that of Barber.
40. In September, 1842, Fletcher is found in company with another person, who one of the witnesses believed to be Sanders, at King's Langley - all the witnesses to that interview distinctly swear that Barber was not there. Miss Slack, it appears, at that time had left Chelsea, and was living with her brother [sic] Captain Foscett. When at King's Langley, Fletcher and his companion made inquiries from the witnesses, Apsley and his wife, about Miss Slack. That information was given them upon that occasion. The object of that inquiry it is not for me to define, I leave that to be explained by my learned friends, but whether proper or improper, whether fraudulent or *bona fide*, it must be clear to all who seek

explanation of every fact in this case, that it by no means implicates Barber, and these inquiries, supposing him to be an innocent agent, would be just as necessary to impose upon and deceive him as to cheat others.

41. It is said by my learned friend, that when Fletcher reached London, he communicated to Barber what he had learned at King's Langley. For this statement you have no authority but the assertion of my friend Mr Erle, and you will find in more instances than one, that he has instituted the inferences and presumptions of those behind him for facts. No one can doubt that Fletcher did make communication to Barber, that would be necessary to set Barber in action, though Barber be as innocent as any one of you, and if you look at the matter in which Barber acted from his instructions, unless I am much mistaken, you will perceive marks and proofs of *bona fides* throughout.
42. Your attention has been called to the correspondence between Barber and Captain Foscett. Gentlemen, stop at this point for a moment, place the conduct of Barber and Fletcher side by side. When Fletcher is seeking for information he is found at a distance from home, prowling about the residence of Miss Slack, making inquiries from parties to whom he was not known, or to strangers to him, refusing to approach even the habitation of Miss Slack when invited so to do, although reminded that in his way to the station he would pass the house - still you find him anxious for information, yet not daring to approach the only parties from whom any satisfactory knowledge of the object of his inquiry could be obtained. This is the way in which Fletcher is proved to have acted.
43. Turn me now to the conduct of Barber. To whom does he make application? Not to a stranger - not to domestics, - but, to Captain Foscett, a gentleman of rank and influence in society. How does he make his application? Not by word of mouth, when no third party is present to witness his conversation, but by letter, furnishing lasting, undeniable proof, of the object of his search, and the means and fruits attained. *Littera scripta manet* [The written letter remains]. In whose name does he write that letter? Not in a feigned name, but in the joint name of himself and partner, Barber and Bircham. Had he written that letter in his own name, simply, from his private residence as he might have done, requesting that all replies might be addressed to him as private, that would have furnished just ground for suspicion and animadversion but when we find him, from his own office, writing to Captain Foscett, requesting replies to that office addressed to Barber and Bircham, knowing as I presume you do, gentlemen, that all letters so addressed to attorney's offices would be opened by either of the principals in the absence of the other, and in their absence, by their clerks, who, that is just or reasonable, can for one moment believe that that correspondence had for its end the achievement of a purpose, which, if vicious, the commonest prudence would have suggested secresy [sic], deception, and disguise.
44. It has been said, that Mr Barber's object in writing to Foscett was to get information to enable him, jointly with Fletcher, to obtain the money standing in the name of Miss Slack. I shall show you, by and by, gentlemen, that that conclusion is as absurd as it is unjust, irrational as it is uncharitable. Gentlemen, all the information that Captain Foscett could furnish might have been obtained through other channels. The age of Miss Slack, her name, her family, her handwriting; all these might have been procured through servants, acquaintances, tradesman, or personal observation. [32]

45. The first letter to which your attention has been called is dated October, 1842, it asks for the legal personal representative of Ann Slack, or executors, and also makes inquiries as to the *deceased* Ann Slack. On the part of the prosecution much stress has been laid upon the fact of Barber describing Ann Slack as “deceased”. But these presumptions of guilt, so fondly cherished by my learned friend, can only co exist [sic] with the belief that Barber knew as well as Fletcher upon this subject, of which, I again repeat, there is not the slightest evidence. Reverting to the important fact, *admitted* on the part of the prosecution, that Fletcher was Barber’s client, the opposite conclusion is the only just one.
46. Christmas was in close correspondence with Fletcher, Barber never saw him. Christmas had access to the stock books, and might well believe, from what he there found, that Miss Slack was dead, [sic] £3,500 had lain dormant for twelve years, and, reasoning from that fact, he could hardly come to any other conclusion than that the original claimant was defunct. This information, in all probability, he would give to Fletcher, and Fletcher, with such restrictions as caution might suggest, would furnish this information to Barber.<sup>34</sup>
47. And the sentence in one of Barber's letters that has provoked much comment, is the following - “As we find an entry in the name of Ann Slack at Somerset House, by which it appears she died at Bath” - This, to Mr Freshfield, seems of guilt proof unanswerable, because it is said that there is no such entry at Somerset House; and because the party described in the will said to be forged is represented to have died in the February following. Let me call your attention to the former. When Mr Barber writes, or rather when his clerk writes, - for the letter is found to be in the handwriting of the clerks at his office (a fact worthy [sic] your attention) - “we find an entry in the name of Ann Slack , at Somerset house,” he does not mean to say - “*we have personally seen the entry*” it means no more than this - “we find, from the information of those who instruct us,” and had Mr Barber known that no such entry existed, would he have dared, think you, to have made such an assertion? Somerset House being within 5 minutes walk of the place from which he was writing? the registry-office open to all her Majesty's subjects? would he have dared, I repeat, so to have said, or does the statement itself argue strongly that he had been imposed upon? As an answer to Captain Foscott, the greater part of the sentence is surplusage, to have satisfied him, it would have been quite sufficient to have stated that Ann Slack was dead. Directing the attention of his correspondent to Somerset House could in no way assist him, but if he were stating a falsehood, it would be well calculated to frustrate his design and endanger himself.
48. Now, gentlemen, let us, for a few minutes, dwell upon the other fact which seems to Mr Freshfield to be so unanswerable. I have already, I trust, succeeded in convincing you that Christmas believed in the first instance that Miss Slack was dead, that he had so informed Fletcher, and that Fletcher had given this information to Barber. Is it then a thing incredible that an honest attorney might be led to believe in the decease of a party in October, and afterwards, by contrivance and cunning, on the part of one in whose hands he would have confided his own life and all its dearest interests – and when I tell you, gentlemen, that but two months ago Mr Barber made Fletcher a trustee of property to the amount of £30,000,

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<sup>34</sup> Charles Wilkins and H. Gregory (1844) *The Queen v. Barber, Fletcher, and others. The Speeches of Mr. Wilkins, in Defence of William Henry Barber*. London: John Crockford & Son, 32.

it will enable you to form some estimate of the reliance which Barber had upon his fidelity - be led to the conviction that he had been previously misinformed by discovering that the party whom he believed dead was at that time living, and did not depart this world for some months afterwards[?].

49. Gentlemen, before you pronounce upon the unprobability of this, again look at the positions of the different parties, and their relations to each other. Fletcher has been for years avowedly the seeker of unclaimed properties. I do not wish to disparage him by such a statement[,], there are many persons engaged in such pursuits, of untainted honesty - who have been the means of essential benefit to deserving families. Of course, in investigations necessary to discover the right owners, either to landed or to funded property, conjecture must be the guide. That conjecture will, no doubt, very frequently embrace inferences afterwards found to be untenable. And that which we believe in October we may have good reason to reject in March, especially when our belief is created, and is easily destroyed by one whose rank and reputation have placed him above suspicion.
50. But, gentlemen, more of this anon. I will show you, before I close my observations, that all Mr Freshfield's conclusions, though committed to paper, and artistically arranged, will bear no one's reflection but his own.
51. Gentlemen, is it not clear to you that the same observations which have been urged against Mr Barber will adhere with [33] equal tenacity to Mr Bircham? That this business was not done behind Mr Bircham's back must be evident to you, although the Bank clerks will not admit the fact - but, remember this, gentlemen, none of them dared to deny it - that most of the correspondence in this case is in Bircham's handwriting. They, on the other side, have never hinted a reproach at Mr Bircham, but how can he escape if you convict Barber? Can you doubt that he would feel an interest in all business conducted in the office, and when you find him actually engaged in the very transaction which has led to this indictment, what other conclusion can you come to then he, like his partner has been imposed upon?
52. But let me not lose sight, gentlemen, of that to which I so earnestly invited your attention - I mean the conduct of Barber, as contrasted with that of Fletcher. Not only do you find Barber writing in the way already described to Captain Foscett, but he is shewn to have constant interviews both with him and his professional adviser, Mr Baxter. I think you will be of opinion that Captain Foscett has furnished an answer - to my judgement a full and perfect answer - to Mr Freshfield's reasoning, - evidence I will not call it.
53. Captain Foscett complained that my client was not sufficiently explicit. Do you think, gentlemen, that such a complaint lies in Captain Foscett's mouth? Was he explicit? Nay, more, did he not take pains to deceive? Did he not assert that which was palpably untrue?<sup>35</sup> Did he not make statements which went to shew that it was utterly impossible that Miss Slack, his sister, should be the party in whose name the stock was lying at the Bank?
54. Do let me entreat you, gentlemen, by all that is just and reasonable, to mark the description, or rather mis-description, which Captain Foscett gave of Miss Slack. He stated that she

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<sup>35</sup> Wilkins and Gregory (1844) 33.

was twenty-seven years of age, that she managed her own affairs, and that she had no unclaimed dividends.

55. How have stood matters at the Bank? The Ann Slack in the Bank books had executed a power of attorney, authorising another party to receive her dividends, and that, mind, nearly twenty years before this inquiry, so that when that power of attorney was executed, Miss Slack, Captain Foscett's sister, could have been only seven years of age, clearly shewing, without any further evidence, that she was not the party.
56. But this was not all, the all cautious Captain Foscett, who complains of having been misled, stated, not as a matter of surmise, but as a positive fact, that his sister had no unclaimed dividends, that she had never executed a power of attorney, and this, mark, after repeated conversations with his sister on the subject. Now, after this, how can any human being, capable of distinguishing between age and childhood, £3500 and nothing - I say, how can any one capable of such distinctions contend for a moment that Mr Barber ought to have known that Miss Slack, Captain Foscett's sister, 27 years of age, managing her own affairs, having no unclaimed dividends, was the Miss Slack who had executed a power of attorney 20 years before, and who had at that time unclaimed stock to the amount of £3500? With what reason or justice can Captain Foscett, or any other person, complain of Mr Barber's reserve?
57. Mr Barber was hoping that inquiry and investigation would lead to the discovery of the right owner, that discovery, he might fairly anticipate, would be amply rewarded by the legitimate claimant, caution was requisite for two purposes - first, to ascertain the genuineness of the claim, and then to ensure a fair compensation to his client and himself, for their exertions in the discovery. No doubt, had Captain Foscett succeeded - and I emphatically declare that it was his own fault that he failed - he would have made Mr Barber a polite bow, have thanked him for his information, and the extent of Barber's compensation would have been a well-timed declaration of Captain Foscett's gratitude.
58. But to proceed in reference to his correspondence Barber writes for the signature of Miss Slack. For what purpose? Gentlemen, it is amusing sometimes to read the observations of many of the learned pundits of the press, who seek to edify the public by their observations on passing events. It was said by one of these worthies that Barber wanted the signature of Miss Slack for the purpose of forgery, that is, to enable him to imitate her autograph. If that was so gentlemen, Mr Barber's powers of imitation must be very inferior to his creative faculties, which have been so much eulogised and exaggerated - for just purposes, no doubt- by my learned friend. The signature of Miss Slack, as furnished by Captain Foscett, is written in a very neat lady's running hand, compare it, I beseech you, with the signature to the will now produced, and alleged to be a forgery. No living man can believe the latter was intended to be an imitation of the former.
59. But gentlemen, I make a still further use of this fact. Mr Freshfield says - and in this he is echoed by my learned friend, Mr Erle - Barber must have known that Miss Ann [34] Slack, Captain Foscett's sister, was the right claimant to this stock. Gentlemen, I say that is impossible. You have seen the handwriting of Miss Ann Slack, furnished to Barber and Bircham by Captain Foscett, as the autograph of his sister. Now, had Mr Barber known

that she was the Ann Slack whose name was signed in the Bank books, he must have discovered in an instant that the production of his [sic] will, signed in a large, upright, clumsy hand, would be almost sure to lead to the detection of the forgery, and how it happened that escaped discovery is for those who have the care of the Bank interests to explain.

60. The next fact furnishing food for censure is Barber's statement that he had unusual means of [sic] information at the Bank, and so he had, whether direct or indirect, the assertion is equally true. And it is quite plain that many others have availed themselves of such information, for Christmas himself has told you that he has received more than £500 from different parties for furnishing such information. I do not stop to inquire whether Christmas were right or wrong for so doing, but I do not go to the length of condemnation to which some people have gone in their comments upon his conduct.
61. It seems to me that he might well believe that he was only aiding justice in helping people to their own, but whatever may be your opinion of his behaviour, it is quite clear that he does give information to Fletcher, that Fletcher, who was Barber's client, be it ever remembered, carried that information to Barber, and justifies Barber's statement that he had access to information at the Bank, and you will also bear in mind that this announcement is made by Barber to Captain Foscett, in the presence of Mr Baxter. This he never would have done had such a declaration involved any consciousness of impropriety.
62. Well, after Miss Slack's signature has been obtained, Fletcher takes it to Christmas, and, whatever may have suggested itself to Fletcher in the after part of this affair, I am inclined to think that up to this time, at any rate, he was in honest pursuit after the claimant to this property.
63. What is Christmas's answer? Why, that the signatures did not correspond, and that he thought that the signature of one was written by a person much older than the person who had subscribed the other. What is the answer upon this Barber that writes to Captain Foscett? Why, exactly that which Christmas had stated to Fletcher. This answer of Christmas's, coupled with the former statements of Captain Foscett, convinced Barber, as it would have done you, that Miss Slack, Captain Foscett's sister, was not the right claimant to the stock then lying in the Bank. Gentlemen, you will remember that I have just stated that up to this point I believe Fletcher to have acted honestly, it will be for you to follow him from this point, to watch him well in all his doings with my client, and to say, whatever Fletcher's views may have been, whether Mr Barber did or did not act in obedience to his instructions.
64. Of course much must be left to inference. In affairs between attorney and client, you need not be reminded that much must of necessity be transacted in privacy and strict confidence between them, when you consult your attorney, it is with closed doors, and if in after life you should be called upon to explain any portion of your conduct, arising out of legal proceedings in which you might be implicated with your legal advisor, you would be compelled, as I am now, to draw upon the reasonings and influences of your jury for your justification.

65. Well, upon the 25th of February we find Fletcher at the register office in Belgrave-square, at least if we may believe some of the witnesses on the part of the prosecution at the expense of the accuracy of others. For what purpose does Fletcher go there? –
66. [Mr Erle -there is no evidence as to the register, as that has been withdrawn]
67. - Oh no, it shall not be withdrawn, you have produced it as one of the papers found at Barber's office, it shall not be withdrawn. It is one of the instruments showing how Barber has been misled, - proving the pains that have been taken to deceive him, - and, though last not least, showing that its existence furnished no terrors for him. Gentlemen, I again ask, with what objective did Fletcher go to the register office? Why, to register the death of Ann Slack, of South-terrace. This step could be necessary for no other purpose in the world than to deceive Barber. It was not required at the proctor's, it was not asked for at the Bank, and I repeat, it could be for no other purpose than to deceive Barber. It was never hinted at when they obtained probate, it was never alluded to at the Bank - where was it found? - at Barber's office. Oh yes, gentlemen, they may well seek to withdraw that document, but withdraw it they shall not whilst I have a hand to hold it. In whose name did Fletcher appear at the register office? In that of Robert Hart. Prove to me, if you can, that Barber, throughout the whole business, sought concealment in a feigned name? Gentlemen, there is much discrepancy in the testimony of the different witnesses for the prosecution as to this handwriting, some declaring it to be Fletcher's, others that of Sanders. I leave my learned friends to avail themselves of this, but this we do know that it is not Barber's, and that Barber was no party to the proceeding.
68. On the 8th of March we find an advertisement in the *Times*, inquiring for the legal personal representatives of Miss Slack, and to whom are the parties interested referred? Not to AB or XYZ, not to Barber alone, but to Barber and Bircham, and this, mind, in the face of Captain Foskett and Mr Baxter, his attorney. All the observations of Mr Freshfield and of my learned friend bearing upon Barber, pressed just as heavily upon Mr Bircham. The letter addressed to Captain Foskett, describing Miss Slack as deceased in September, is signed "Barber and Bircham," and yet, although they admit that Mr Bircham is perfectly innocent, by a perversity of reasoning which to me is an enigma that yet remains to be solved, the same evidence that proves Baker's [sic] guilt justifies Bircham's innocence. But why this advertisement at all? Does crime court publicity and invite comment and scrutiny? It was not in the slightest degree necessary for the accomplishment of any guilty purpose, and is reconcileable [sic] only with the honesty of those who inserted it.
69. But, gentlemen, did you mark the eagerness and anxiety with which my learned friend withdrew the reply to Mr Offley's letter? The moment that he discovered that that reply was not in Barber's handwriting, and that it was whispered that it was in Bircham's - a fact that I more than a whisper-and I dare my opponent to the proof - that moment (God save the mark) my friends candour and sense of firmness prompted him to withdraw it, and when he found my urgency to have it put in stripped him of such a pretext, he told us plainly he would not put it in. But, gentlemen, to have established his claim to firmness he ought not to have put in Offley's letter at all, unless he meant to follow it up by Bircham's reply. Offley's letter can be no evidence against Barber, unless you prove, in some way or other, Barber's knowledge of its existence.

70. On 9th of March, to proceed with my friend's statement, Mrs Dorey went with Fletcher to take lodgings for a person named Slack - another expedient, gentlemen, to deceive Barber, for what other purpose could this have been done? As far as the proctor and the Bank authorities were concerned, it mattered little whether she came directly from Bath or Bristol, or from Francis-street, Tottenham-court-road, but to deceive Mr Barber, with whom she was of necessity, as a professional man, frequently to correspond, it is requisite that she should have "a local habitation and name," in keeping with her assumed character and avowed object.
71. Upon the 18th of March a female, whom some of the witnesses declared to be Mrs Sanders, was introduced to Mr Barber, at his office, as Miss Slack, by Fletcher. From his office Barber goes with her to the proctor, and what attorney who hears me now, justly as he may figure himself upon his reputation, would have hesitated to do the same. Who was that proctor? A man of the highest respectability, with whom Barber had been acquainted for years - Mr Wills. Listen to Mr Wills's description of the affair and of Barber's conduct in reference to it. He said it was the most ordinary transaction, that Barber acted throughout as any respectable attorney would have acted, that Barber paid the probate duty, and you will remember that Mr Freshfield stated that he saw an entry of that very payment in Barber's ledger at Barber's office. The reasoning of my friend Mr Erle upon this portion of Barber's proceedings is unworthy [sic] the clerk of the gentleman instructing him.
72. With Captain Foscett, says my friend, everything was doubt and difficulty, letter after letter, and inquiry upon inquiry, but, with the female calling herself Miss Slack, no inquiry appears to have taken place at all. When circumstances appear to justify any inference against Barber, that inference is used as fact, but how slow are my opponents to infer, or even to admit, inference in his favour. Again, I meet my learned friend with his oft-repeated admission that *Fletcher was Barber's client*. Upon what authority has my friend Mr Erle presumed to urge against any of the prisoners the volume of facts contained in his opening speech? Without inquiry, without any scruple, he has, first of all, stated a hundred circumstances as undoubted, and, in the discharge of his duty, before calling a single witness, asked you to convict all the prisoners. Upon whose authority has he done all this? Upon the instructions of his client. No doubt, had some third party, in no wise concerned in this trial, proffered information, my friend would have been much more scrupulous in accepting it.
73. It has already been stated in evidence that Mrs Sanders was introduced by Fletcher to Barber as [36] Miss Slack. Was it likely that Barber would treat Fletcher, *a client of six years standing*, as he would Captain Foscett, of whom he knew nothing, and who, throughout all his inquiries, evaded every question, and who seemed to be quite as skilful a master of fence in an attorney's office as in the field. Fletcher was instructing Barber upon information that he had obtained from Christmas in the first instance, and at the time to which my learned friend's observations point. The female is introduced by Fletcher as the person whom he had discovered to be Miss Slack, how worse than idle, then, to institute a comparison between Barber's conduct to Captain Foscett and Mr Fletcher!



74. Gentlemen, a letter was next referred to by my friend, and afterwards produced, containing an application for the re-transfer of the stock, that letter is not in Barber's handwriting, but in Bircham's. True, the clerks at the Bank will not admit it to be Bircham's, though they declare it not to be Barber's, but, mark, gentlemen, there is not one of them that has dared to swear it is not Bircham's, although they have been in the habit of seeing Bircham's signature several times in a week. They, without any hesitation in the world, swear to Barber's figures, although in pencil, but for reasons that I think will be intelligible, none of them can venture to identify Bircham's signature.
75. Let us proceed. Probate being obtained, says my friend, the next object was to obtain the money, but this could not be effected without various preliminary certificates and inquiries. Remember, gentlemen, had this been the fairest transaction ever completed at Threadneedle-street, all these certificates and inquiries must have been obtained and answered, and by an attorney. Barber's presence and interference, therefore, are compatible with honour and honesty equal to Mr Freshfield's. Barber introduces Miss Slack to Mr Philpotts, and, "*horribile dictu,*"
76. Philpotts, who had never seen her before in his life, identifies her without a moment's hesitation as Miss Slack, and what is more dreadful still - more shocking to the pure morals of the old lady in Threadneedle-street- he has done so in at least three hundred instances besides! Stand forward Mr Philpotts, and tell my learned friend why you did so? Hear his answer- "*I did so as a matter of course, and the same thing is done every day on the Stock Exchange.*" What will my opponents say to that?
77. Still the warrant was issued for the payment of £1150, and your attention has been called to some pencil writing at the back of that note, describing the notes and cash in which the amount was to be paid. That pencil writing is Barber's. Gentlemen, that writing was wholly unnecessary, instruction by word of mouth was amply sufficient. To treat this, then, as my learned friend has done, you must believe that the shrewd, clever Mr Barber went out of his way, - took unnecessary trouble to furnish evidence against himself, - and not only so, but that he took great pains to preserve that evidence.
78. Now, just for one minute, if you dare do so in the presence of Mr Freshfield, treat Mr Barber as an innocent agent. A lady is brought to him in deep mourning, just after the decease of her mother, as it is represented [-] is not that circumstance calculated to excite his sympathy and interest? But this is not all, that Lady is afflicted, she is a cripple, she has the *gout in both hands*, and you will remember that one of the witnesses stated, as a reason for having noticed Mrs Sanders on the occasion, that she was lame and leaned as though unable to support her own weight.
79. Now, gentlemen, with these facts before your eyes, will you seek for any adverse construction upon Barber's conduct? Did not gallantry, to say nothing of humanity, require his help? It is true there was no absolute necessity for him to accompany this lady to get the cash at all, but would any one of you, in her then position, have left her till the business had been completed? Would you not have done as Barber did? *Not if you had been guilty!* No, then you would have kept out of sight, then you would have been found prowling at a distance, watching the progress of your fraud, and waiting anxiously for your booty. In that

case, indeed, you would have avoided the presence of the proctor, the stock broker, and the clerks at the Bank, as you would have shunned the approach of a hungry tiger. Mr Erle uses the pencil writing to condemn. I avail myself of it to acquit.

80. Ah! But I fancy I hear the counsel for the prosecution say, how will you ever get over the mountain of gold? Mountain, indeed! - £600 in gold! incredible sum! How, I should like to be informed, did those who paid it surmount this difficulty? How does it happen that their suspicions never find utterance till many months after the payment? Out upon such reasoning! [sic] Why, these very Bank clerks have told you that there are many of them whose exclusive duty it is to give gold in payment of notes and dividends, that their only duty from morning till night is to pay gold. Was not Mr Philpotts right when he said [37] the payment of such a sum in gold was by no means unusual?
81. But what do they conclude from this payment of £600 in gold? To make their argument good for anything, they ought to have shown that the whole amount was asked for in gold. The sum of £1150, you will remember, was the amount of unpaid dividends only, there were besides £3500 of original stock, so that only £600 out of £5000 was paid in gold, the rest in notes. What object, then, or motive, is attributable to Barber? It could be no fear of identification either of himself or the notes, he had called a witness to effect the former, and had seen the clerks take copies of the latter. Philpotts told you that when Barber and Miss Slack returned to the Rotunda, Fletcher was there to meet them, again I ask you to contrast Barber's behaviour with Fletcher's.
82. It is impossible, gentlemen, to believe that Barber received any portion of that money. Large sums have been traced to Fletcher and Sanders in notes and gold. They, on the part of the prosecution have produced Fletcher's bankers from Westminster, and Sanders's from Bristol. Why did they not summon before you Barber's also? I have furnished an answer to that inquiry this morning, Barber Banked with the Bank of England, and *they knew it*, yet did they abstain from putting one single question as to Barber's account, because they knew that inquiry would demonstrate *Barber's POVERTY*. They knew that he had not paid in one shilling to his account, since this transaction, and they also know that at this moment he is penniless, houseless, friendless. They have examined his every paper and book, and not one disbursement or receipt can be found to account for the possession or payment of a fourpenny piece of this money.
83. My friend told you that he should prove that Barber and Fletcher determined on changing the notes into gold, where is the evidence of that? Certainly not in the statement of Philpotts, the only person who professes to have witnessed any part of the business. Philpotts does say that there was a talk amongst some of them about changing the notes into gold, but whether Barber took any part in that talk he no more knows than you do.
84. As to what became of that gold there can be no doubt, *for Mr Dorey's shopman has explained that*. Not a fraction of it ever found its way to Barber's purse. Had Barber been a conspirator with these people, his abilities, professional skill, and the large share of the danger that he took, would have entitled him, if there had been any honour among thieves, to more than could be claimed by all the others together, and *yet you find the Sanders's, and Mrs Dorey with their thousands, whilst BARBER IS PENNILESS*.

85. We have been told that the attention of the Bank authorities was called to this transaction in November 1843. In that month Mr Freshfield called on Barber, and informed him of the discovery, and also, if you believe him, announced, in pretty palpable terms, that he, Barber, was implicated in a charge of forgery. Gentlemen, it was said of me the other day, that I am a daring advocate, whether that were intended as a reproach I shall not pause to inquire, subjects of far greater importance now claim my attention. I am not ashamed to declare that, when defending my client's interests, I look neither to the right nor to the left, that I pursue but one object, and no obstacle of rank or title, no personal consideration can divert me from my course. If to be fearless in the discharge of my duty provoke the censure and reproach even of the Attorney-General, I have more than enough of philosophy to bear it. The reproaches of others I have borne often, and shall endure again with equanimity, my own I cannot endure. Gentlemen, Mr Freshfield stands high in the estimation of the estimable, he has everything to render him formidable as an opponent, valuable as a supporter, nevertheless, I shall deal with his evidence as I would or he the most inconsiderate and unimportant person within the walls of this court.
86. I would do the same were he my father and Barber my personal foe. If to be daring in such matters as these be culpable, may that daring sustain me in my dying hour. I tell you then, at once, gentlemen, without qualification or hesitation, I do not believe Mr Freshfield, that, in my estimation, the evidence which he has given here to-day, and the manner of giving it, will follow him as a reproach whilst he lives. Mr Freshfield is a man of education, well acquainted with the meaning of words, as a lawyer he cannot plead ignorance of the requirements of the oath which he took before giving his evidence, that oath was to speak the truth, the *WHOLE truth*, and nothing but the truth. What excuse, then, can Mr Freshfield's best friend urge for his avowedly *WILFUL* omission of the only factor Mr Barber's favour? Mr Freshfield must know that a "*supressio veri*" is frequently more disgraceful to the witness, and more dangerous to the accused than actual falsehood.
87. I know what would have been said of a poor unlettered man under [38] such circumstances, and I have yet to learn that rank and knowledge should screen their possessors from that obloquy which their possession ought to enhance. If the precedent established by Mr Freshfield possess charms enough for imitation, who can be safe?
88. Is it to be endured, that a witness may prepare a brief before coming into court, arranging every incident, and disposing every fact artistically, so that it may further the object he has in view, and most injure the interest to which he may feel himself opposed? Is that to be endured? Mr Freshfield was requested to descend to the level of ordinary witnesses, to put his brief into his pocket, and relate the conversations and events as his memory furnished them, this he declined to do.
89. He admits that he has reverted to that interview with Mr Barber frequently - that he has read over that written statement at least half a dozen times, that his mind must have been much engaged in this prosecution, it will be vain for him to deny, and yet he refuses to proceed a step without his crutches. No reason for his refusal can be given but to fear to trust his memory, and yet, if you believe him, nothing but that memory had he to help him when his story was committed to paper.

90. But why was the fact of Barber's indignation at Mr Freshfield's attack upon him suppressed? In weighing testimony, gentlemen, you must regard manner as well as matter. What Mr Freshfield's manner was, when I wrung from him that the suppression was wilful, I leave to speak for itself, but why was it suppressed? Without that statement you would have been left to infer that Mr Barber was palsied with a sense of guilt, that he submitted to imputation upon his honour and name with quiescence, nay, more, with *submission*, or almost amounting to *admission*. Indignation implies an active denial of the charge and fearlessness of him who made it, cannot you see now why this was suppressed, and am I not justified in saying that the wilful withholding of this piece of information poisons the whole of Mr Freshfield's evidence? Did he reflect upon what he was doing? Did he weigh the consequences of his evidence?
91. But a few months since, and Mr Barber, in all that can truly dignify the man, stood as high as Mr Freshfield. Did Mr Freshfield, when he wilfully omitted the fact of Mr Barber's indignation, lose sight of the sweets of home life - the comfortings of friendships - the honour of the world - all that can sweeten existence? - did it ever occur to him, what a lone lost wretch was he whom the world had stript [sic] of his good name? - did not such reflections as these ever cross his mind? - and did he wilfully garble his evidence to effect a consummation so dreadful?
92. The sycophancy which palliates the error and vices of the powerful and great, I abhor. Never will I yield obedience to those maxims of what is termed polite society, call that honourable which is dishonourable, and paying court to the gaudy trappings in which worthlessness maybe arrayed, because they're gaudy.
93. Do you believe, gentlemen, that the conversation between Mr Freshfield and Mr Barber was such as he has represented it? Is it credible, had Mr Freshfield believed Barber to have been guilty of this offence, that he would have allowed him the undisturbed interval of three weeks wherein, had he been so disposed, to destroy the muniments of his guilt, and to effect his escape?
94. I say that Mr Freshfield did not believe him to be a guilty person. I say that he must have left him, after that interview, under the firm conviction of his innocence. His conduct is compatible with no other hypothesis. Had Mr Barber prevaricated, shuffled, and stammered, as he is represented to have done by Mr Freshfield, why did Mr Freshfield, for three weeks, sleep upon such symptoms of guilt? And how can you reconcile Mr Freshfield's evidence, of fraud, forgetfulness, and palpable contradictions, with that portion of Barber's conduct, wherein he offers to lay before him his retainer, his papers, and books, furnishing every fact and circumstance connected with the affair? or what ingenuity can render the servility with which Mr Freshfield has clothed Barber's replies to his accusations congruous with that manly indignation which Mr Freshfield took such pains to conceal?
95. Gentlemen, in a case like this, Mr Freshfield, as the servant - the paid servant of the Bank of England - had but one duty to perform - had he been the party defrauded, his own feelings and discretion might have prompted forbearance and connivance at escape,

without subjecting him to much censure, but as it was, had he been convinced of the guilt of Barber, imperative duty demanded that he should instantly have handed him over to the custody of the law. Let me not be told to-day that any kindly feeling for my client prevented that catastrophe, if so, I meet such hypocrisy by the wilful suppression of truth when that truth was indispensable to both mercy and justice.

96. Gentlemen, there is another circumstance which should prompt you to look with the greatest jealousy at Mr Freshfield's evidence. It is impossible to contradict [39] it. *No third party was present*. I am persuaded that Mr Freshfield believed Barber to be an innocent man, and what subsequent portion of Barber's conduct may have induced an opposite conclusion, is as yet undisclosed. Surely our opponents will not so abuse reason as to call your observation to his procedure after Mr Freshfield's visit.
97. Mr Freshfield tells you that he announced to Barber that the forgery had been detected, that information of the discovery had been forwarded to the Treasury, that prosecution would follow with all the expedition and force that a powerful government could command. Alarming intelligence, truly, to a guilty man! - suggesting, as one would suppose, immediate escape, - urging every precaution to destroy past and to prevent future evidence of fraud. But what effect has this startling announcement on Barber? Pray attend. He tells this fearful messenger of the law that he has no doubt all will be found to be perfectly right, for that Miss Slack is a most respectable person. "Yes," methinks I hear my friends say, "of course it was all very well to say so when accusation came, when his accuser stood before him." True, but did he not furnish, in the three weeks that ensued, the most unanswerable evidence that he believed what he said? - that he was assured all would be found to be right?
98. During the whole of those three weeks he was watched and dogged night and day by the Forresters, and what do they state as the result of their watchings? Why, that Barber went to his office in the morning, and returned to his home in the evening, with all the regularity and punctuality marking the man of business, of one absorbed in the every day affairs of his office, without exhibiting sign or symptom of distraction or fear.
99. Gentlemen, you will know doubt well remember that I defied the prosecutors to adduce one fact that should justify a belief in any intimacy between Barber and Fletcher, that defiance I have over and over again emphatically repeated. On the part of the prosecution they infer that Barber and Fletcher were conspirators in forgery and fraud, I presume that you have long ere this qualified yourselves to estimate human motive and action, both, I know, will, in many instances, be the offspring of education, but there are certain circumstances and positions in life under which we all uniformly act, as if by instinct, - we all flee from apparent danger and seek shelter and protection, as by an impulse common to animal matter.
100. Now, had Barber heard the sentence of eternal banishment already pronounced, it could not have called forth greater alarm than must this message of Mr Freshfield's, had he been guilty. The forgery was discovered, - the evidence was in his adversary's hand, - the emissaries of the law were in hot pursuit of the criminals, - not a moment was to be lost, his participators in crime must be forewarned, every vestige of his share in the business

was to be effaced, every line cancelled, and the first opportunity for escape to be ascertained and seized, all this would guilty fear have suggested, but will it be believed this forger - this man, guilty of almost highest offence known to our laws - a lawyer, knowing the consequences of detection - transportation for life - is found three weeks after this in his own office, with every paper relating to the transaction carefully folded up and indexed by his own hand. Gentlemen, ask yourselves - for this is the way to test, to a certain extent, the conduct of others.

101. Had it been announced to you that a forgery had been committed, that you had participated in that forgery, that the officers of justice had received instructions to apprehend all who might be found to be implicated - ask yourselves, I say, what would have been your first effort after the messenger had brought such alarming tidings? - would you not immediately have rushed to your partner in guilt? - would you not have announced to him that your crime was detected? - would you not have deliberated with him as to the best means of frustrating the pursuit of your accuser, and of effecting your deliverance and escape?
102. And yet, although the Forresters were watching Mr Barber during the whole of the interval that elapsed between Mr Freshfield's visit and the time of his apprehension, they never saw him once in company with Fletcher, they never saw Fletcher visit his office, nor have they discovered one paper writing to show that a line of correspondence had passed between them. To suppose the detection of guilt accompanied by such carelessness and indifference, is to violate every accepted notion of cause and effect in human conduct.
103. The next circumstance which has furnished topics of animadversion is Barber's half hour's deliberation with Fletcher before putting him into the witness-box. But what will my friends say to the fact of Barber's having called Fletcher at all? Can that be reconciled with any other supposition than that of Barber's innocence? Would he have dared, without a moment's preparation, to have sent for him whose very answers must steep him still deeper in guilt, and strengthen the meshes of the [40] net in which he was involved? Could there be any man whose presence Barber would have more reason to dread than Fletcher's, had they both been guilty? But it is thought something very suspicious, forsooth, that Barber and Fletcher should have deliberated for some half hour before Fletcher was put into the witness-box. Is it a thing to be marvelled at that Fletcher should be unwilling to appear as a witness? - is it a thing unheard of that an attorney, before putting a witness into the box, should deem it prudent to ascertain the extent of the witness's inclination and capability to furnish information upon the case then under inquiry? Would my learned friend venture to examine a witness without first ascertaining from his client the nature of that witness's evidence, and without taking care to ascertain whether his memory be sufficiently retentive to state with accuracy the facts and circumstances necessary to the inquiry at issue? The contest, says my learned friend, in this case will be upon the question of guilty knowledge. That question can be answered only by the acts of the party into whose knowledge you are inquiring. Try Mr Barber's conduct by that criterion, and I fear not the result. Remembering that he is an attorney, look through the whole case as laid before you by my learned friend, and show me, if you can, one single act of his inconsistent with his professional character.

104. Speaking of the identity of Ann Slack, my friend Mr Erle says, “a person answering the description of Ann Slack had been found.” Why should Barber go further? Allow a man to make his own premises and he will easily arrive at conclusions suiting his taste and inclination. I deny that a person answering the description of Ann Slack in *any* respect, much less in *all* respects had been found. Ann Slack, the right owner of the property, must have been at least forty years of age[,] the Ann Slack of Captain Foscett was only twenty seven. Ann Slack the legal claimant, had £3,500 unclaimed, and the dividends untouched for twelve years, the Ann Slack of Captain Foscett had no unclaimed dividends. Ann Slack, whose name was subscribed to the will, wrote a large, thick, upright clumsy hand, the Ann Slack of Captain Foscett wrote a neat, lady-like, running hand. Where, then, I ask is a person “answering in all respects” the right owner to be found. So far from the person described by Captain Foscett meeting the necessary descriptions of the real Ann Slack, there is not one single point of resemblance between them. Is it fair to measure Barber's estimate of Fletcher, at that time a worthy and respected man, with the estimate that my learned friend has formed of him as he now stands in the dock, already a convicted felon? - is that fair? - I daresay you will readily believe, gentlemen, that, when a respectable client places his affairs and interests in the hands of an attorney, that attorney becomes unconsciously his advocate, and instead of scrutiny, would often be found seeking to impose upon himself to further the interests of his client. Gentlemen, that feeling reaches up to the bar. Do you seek for a proof of it, you will find it in the perverse reasonings and shallow sophisms urged by my learned friend in justification of this prosecution.
105. My learned friend concluded his address by telling you that if, after all, you can temper your verdict with mercy, it will be your duty to do so. I will not condescend to stand beside my friend in that appeal, I plant my foot on higher ground, and demand JUSTICE. Mercy Is for the judge, you have to give your verdict without reference to feeling, fearlessly and justly according to the evidence, I will not, therefore, condescend to accept, as a boon, from my learned friend that which will send my client out of the dock surrounded by the film of doubt and suspicion. I will not condescend that his path shall be clouded by a verdict stolen from your pity. Let me be instrumental in convincing your judgment of that innocence of which I am myself convinced, and with my latest [sic] breath will I thank God that I have not lived in vain - that I have been the means of rescuing an innocent but persecuted man from shame and perdition.
106. I must now, in accordance with my statement to you in the outset, go through the evidence. The first witness, WILLIAM SEATON, produces the instrument said to be forged. Mr GEORGE BENNETT and MR SMEE, both of them depose to facts, as far as Barber is concerned, of little or no importance. MR JOHN SLACK came into the witness box like a porcupine armed at every point, he met civility with rudeness, and seemed determined that *he*, at any rate, whatever might be the intelligence of the sister, would not shame her by comparison. MISS ANN SLACK was called to prove that the signature to the will was not in her handwriting. Gentlemen, it needed no ghost to tell us that, there is not a character in the signature bearing the slightest resemblance to her's. I pass over [B]EAMAN'S testimony as utterly important [sic], and come to WILLIAM CHRISTMAS, he tells you that he [41] furnished Fletcher some account of the property standing in the name of Miss Slack at the Bank, and, what is important, he has sworn that Fletcher was the only depository of that secret. He also informed you - and this is important - that

Fletcher has assured him that he was satisfied Miss Slack was not the party. Can you have any doubt that Fletcher had taken pains to convince Barber of the same fact? Christmas admits that he did receive from different parties upwards of £500 for furnishing the same information as to other portions of unclaimed stock. Apsley and his wife are important only from their positive statement that Barber was not present when Fletcher made from them his various inquiries relative to Miss Slack. We come now to the evidence of Captain Foskett, a gentleman of rank and intelligence, and one whom Barber must have known it would be dangerous to attempt to trifle with. Captain Foskett tells you that in October, 1842, he received a letter signed Barber and Bircham. That letter is proved by Donald, the Bank clerk, to be signed by Barber, the body of the letter being written by one of Barber and Bircham's clerks. It runs thus –

“SIR,

“We have occasion to ascertain who is the legal personal representative of Ann Slack, formerly of Chelsea, spinster. As we are informed you intermarried with some member of that lady's family, we shall feel obliged if you can inform us who are her executors, administrators, or other legal personal representatives.”

107. What object but an honest one could Barber have had in dictating that letter? I say in *dictating*, because it is quite evident that some other person in Barber's office must have been fully acquainted with the contents of the letter. With the amount and description of the stock Barber was already acquainted, all other inquiries after the birth, parentage, and person of Miss Slack, might have been ascertained by means far less dangerous, more immediate in their results, and quite as satisfactory in their conclusions. The very wording of this letter is calculated to excite, on the part of Captain Foskett, the greatest curiosity and the liveliest interest, both of which, had Barber sought to secure for himself Miss Slack's money, prudence would have suggested to him to have kept asleep. The following is Captain Foskett's reply-

“GENTLEMEN,

“In reply to your letter of the 4th instant, addressed to me at Abbot's Langley, I beg to inform you Miss Ann Slack is my wife's sister, and resident with us. Her eldest brother is also here. Any further communication will reach her, addressed as above, for the present and next week.”

108. The next letter, dated the 25th of October, from Barber to [sic] Bircham, is as follows-

“SIR,

“We are obliged by your letter of the 13th inst., but as we find an entry of the death of Ann Slack, formerly of Chelsea, at Somerset House, by which it appears she died at Bath, we feel some doubt as to her identity with the lady in question. If, therefore, it would not be giving you too much trouble, we should feel exceedingly obliged by your acquainting us whether Mrs Foskett's sister formerly resided at Chelsea, and whether she spelt her Christian name with or without an ‘e’. We notice in your letter you spelt the name ‘Ann.’”

109. That letter contains the announcement, upon which I have already commented at sufficient length, and an entry of the death of Ann Slack at Somerset-house, and yet you find that it concludes with an expression of doubt, even then, as to the identity of the lady in question,





(Signed) "BARBER AND BIRCHAM"

112. Why did Captain Foskett withhold the name of the trustees? Barber's object in refusing to develop his secret is intelligible and rational, the policy of Captain Foskett's mystery and misrepresentation is utterly unintelligible. on the 15th of December Captain Foskett writes thus –

"Abbotts Langley

"GENTLEMEN,

"I have deferred replying to your last inquiry, with the intention of calling shortly, and purpose [sic] being in town on Friday next, or Saturday, when I will do so about eleven or twelve o'clock. You will, no doubt, remember that I stated I could not recommend Miss Slack to make herself a party to inquiry that would incur any expense, until she should see some little ground for supposing it probable she may prove to be the person legally entitled to the property bequeathed, when she would be willing to enter into some arrangement. As you have not yet favoured her with any further explanation, we regret the reserve you think necessary as an obstacle to our throwing further light upon the subject, which a very little communication might enable us to do.

(Signed) "J. Foskett"

113. I pray you, gentlemen, attend to this letter. It shows that Barber and Bircham had requested Miss Slack to become a party to this inquiry that they had besought her to do so. Captain Foskett will not permit it. But, what do you argue from the request on the part of Barber and Bircham that she should do so? Had she made herself a party to the inquiry, with her gallant brother on one side, and the learned and acute Mr Barber on the other, nothing could have prevented her discovering and establishing her claims. It was Captain Foskett's fault - I say so emphatically- that she did not. Mr Barber was reserved, it was reasonable and necessary that he should be so. Captain Foskett was reserved, it was unreasonable and unnecessary that he should be so. But for Captain Foskett, Miss Slack would have been in the quiet possession long ago of her property and Mr Barber would now have been entitled to their gratitude, instead of being treated as a felon. On the 4th of January Mr Baxter writes a letter to Barber and Bircham, enclosing Miss Slack's signature. The signature is handed to [43] Fletcher, by Fletcher to Christmas, and Christmas declares that it does not correspond with the handwriting in the Bank book. A letter is accordingly written by Barber and Bircham to Messrs Baxter, announcing that the signatures do not correspond, as follows –

"DEAR SIRS,

"We beg to return Miss Slack's letter, and to state that we find that the signatures do not correspond, and consequently we have arrived at the conclusion that the identity cannot be supported. We trust that you will be good enough to consider this negotiation [sic] confidential, and, should our exertions to discover the right party prove successful, we shall not fail to communicate to you the results, for the satisfaction of the young lady and her friends.

(Signed) BARBER AND BIRCHAM

“Messrs Baxter and Baxter “

114. The more I regard Captain Foskett's conduct throughout the whole of this affair, the more am I struck with its absurdity, his evasions, his mock mystery, his inaccuracies, his misrepresentations, have yielded a fruitful harvest of misadventure and misery. Why was Miss Slack left at the door instead of being introduced to Mr Barber in his office? Why was she prevented from becoming a party to the inquiry? Why was she represented to be twenty-seven, when she was forty? And why, after all, will my learned friend be so unreasonable and so unjust as to ask you to assume that Captain Foskett had given such information that could leave no doubt on the mind of Mr Barber that his sister was the party entitled to this stock?
115. Barber inquired from him, according to his own evidence, what properties she possessed? - to this Captain Foskett gave no answer. Barber asked if she had ever signed a warrant of attorney? - he said that she had not.
116. Barber asked what was her age? - he said about twenty-seven.
117. From the beginning to the end of Barber's acquaintance with Captain Foskett, it seems to have been the Captain's object to blind and to mislead.
118. You were told that Barber had promised that the results of his inquiries should be furnished to Captain Foskett or his attorney, and I presume that you must be pretty well satisfied that Barber did communicate to Mr Baxter what had taken place. Mr Baxter admits that he did meet Barber at the entrance of Lincolns-inn-fields, that Barber and he had some conversation. What that conversation was, he does not recollect. Gentlemen, it must have been in reference to this property. Baxter was to Barber an entire stranger, under such circumstances as these, it is not very likely that Barber would have stopped Mr Baxter to converse with him except upon matters of business. There could be no business between them but in reference to Miss Slack, and there can be no doubt, although Baxter has forgotten it, that Barber did communicate to him the result of his inquiries.
119. On one occasion, after some conversation between Captain Foskett, Mrs Foskett, and Mr Barber, as they were leaving we are told that Mr Barber inquired if Miss Slack were a lady of strong nerves? - whether she would be likely to receive the surprise of a large accession to her property with equanimity? - for he had every reason to believe that he would be able to put her in early possession, still you see, gentlemen, keeping awake active interest and provoking inquiry, both which he would have great reason to dread if he were seeking to consummate a fraud at her expense.
120. Barber said that the lady had died about six weeks since, my only answer to which is, that he had been so informed by Fletcher, and that he believed his informant, and you will remember that Fletcher gave precisely the same information to Christmas at the Bank.
121. Captain Foskett tells you that he called upon Barber with Mr Baxter, his attorney; that Barber was informed that he was the attorney, and that then Barber repeated in substance

what he had before stated to him alone. Had his statement been false, had the object been wicked, the presence of respectable professional man would have prevented the repetition of the one and the development of the other. Barber was asked by whom he was employed, and the name of his informant, Barber answered that he had been enjoined to secrecy [sic], and that he could give no names. Secrecy and reserve are by no means necessary indices of guilt, but in many instances are indispensably necessary for the achievement of the most laudable ends.

122. He added, that he had information at the Bank, not generally attainable. Upon this I have already said much, and will not tire you with repetitions.
123. Captain Foskett says that, in conclusion, he discountenanced any further inquiries, and that he heard no more from Barber, for which he had no one to answer but himself.
124. Mr Baxter, his attorney, is then called and he merely corroborated, or rather repeated, Captain Foskett's statement.
125. We then [44] come to Mr GEORGE OFFLEY, his [sic] attorney, residing in Henrietta-street, Covent-garden. Having been acquainted with a Miss Slack, who had formerly resided in Smith-street, Chelsea, he answered an advertisement appearing in the *Times* newspaper as coming from Barber and Bircham describing the property and the party to whom it was supposed to belong.
126. Mr THOMAS RAYNARD CHAPPLE, the registrar, produces an entry of the death of Miss Ann Slack, entered in the register as of the 17th of February 1843.
127. He is followed by Mr PRICE JORDAN, with whose negligence and carelessness Mr Barber may contrast his conduct with great advantage and credit to himself. O how eloquent in abuse and reproach would my learned friend have been, had Barber's conduct furnished like topics for animadversion with Mr Price Jordan's. Let us see what Mr Jordan's account is. "On the 25th of February," said he, "Fletcher called upon him to register a death. I asked when it occurred. He said on the 17th of February. I asked where. He said, number eight, South-terrace. I said, there is no such a place in the district. I asked him if he did not mean some place or some houses known as South-place or some houses near the wooden bridge, and he said yes. I asked him the number, and he said, 8. I said, I did not think there were eight houses in the place, and he said they were. I asked him how he spelled the christian [sic] name of Miss Slack, whether it were Ann, with a final *e*. I then entered her as a female aged 68, and that she died of the gout."
128. While at this point, gentlemen, let us again call your attention to the points of resemblance between Captain Foskett's Ann Slack and the description in the will, or rather in the certificate, the certificate having been found among the papers in Mr Barber's office. Captain Foskett's lady is 27, according to his description, the lady, the testatrix is 68.
129. But, gentlemen, to return to Mr Jordan, he is a surgeon – [Mr JUSTICE WILLIAMS. Why do you say he is a surgeon?] - my Lord, I know it to be so, I believe my learned friend will not dispute it - [Mr Erle nodded assent.] - Well, gentlemen, it seems the fact is admitted.

He stated when he got this reply as to the cause of death, that it seldom proved fatal, unless it attacked some internal organ, and then he proceeds throughout the whole of his catechism, raising doubt upon doubt, expressing suspicion after suspicion, and yet, although within five minutes walk of the very place where death is said to have occurred, he took no pains to satisfy his misgivings, by registering the death in the way described.

130. Gentlemen, I do not deny that the certificate is one continual falsehood, I do not deny that it was obtained by fraud, and for the purposes of fraud, it could be for no other purpose than to deceive Mr Barber. A child, in its simplicity, may foster a serpent, an honest man, in his confiding integrity, may preserve that which may be pressed against him as evidence of his guilt.
131. Mr TOMKINS, clerk to Mr Freshfield, is the next witness called to prove that he searched the register at Somerset House, and found no such entry as that spoken of in one of Barber and Bircham's letters. I do not pause to ascertain whether his search were diligent or careless, as far as Barber is concerned the answer is the same. He stated what he believed from the information of his client.
132. Mr HENRY PAGE is called to state that no one of the name of Slack lived at No. 8, South-place, Pimlico.
133. Mrs NEVILLE, and MARTHA, her daughter, prove that Mrs Dorey took the lodgings at No. 7 Francis-street, Tottenham-court-road, for a female, whom she introduced as Miss Slack.
134. The next witness in order is Mr JOHN WILLS, the Proctor. He stated - On the 10th of March, Barber came to him with a female, whom he introduced as Emma Slack, that he has very little recollection on the subject, that the second female, Lydia Sanders, resembled her, and that instructions for obtaining probate of the will were given either by Barber or the female, he did not remember which, but it appeared to him one of the most ordinary transactions that could possibly take place, that the name of Emma Slack is in the will as executrix, that she signed the affidavit as such, that probate of the will was obtained, and the effects sworn under £5000, and Barber gave him a cheque for £80, the amount of probate duty, that on the 27th of March probate was sent, according to Barber's instructions, to the office of Barber and Bircham and handed to one of the clerks.
135. I have thus recapitulated the incidents to you, gentlemen, to show you how orderly the transaction was, how characterised by a total absence of anything like caution, apprehension, or fear. I should like to know what reason Mr Wills could, if called upon, furnish for believing that female to be Miss Slack? That he did believe her to be Miss Slack is evident beyond all doubt, and so did Barber. Wills believed Barber, and Barber believed Fletcher.
136. JOHN WELDON comes next, who tells you that the probate of the will was left at the Bank to be registered (it is not remembered by whom), and that a letter addressed to the [45] Governor of the Bank of England, applying for a re-transfer of the stock, was left with it. That letter is signed both by Barber and Bircham, his partner, the body of the letter

being in the same handwriting as that of all the formal letters from Barber and Bircham. Do we seek to deny that the signature is Barber's? No! We rely on that signature, as evidence in our favour.

137. Mr NOBLE, who, I think, should be dignified with the title of identifier-general of the Bank of England, comes next. Indeed, gentlemen, all these Bank clerks seem, perhaps unconsciously to themselves, to have interested all their mental powers on the side of the prosecution, at any rate it is a singular fact that they have distinct recollection and marvellous powers of identification on the side of the prosecution, whilst the same powers are marvellously defective upon any object on the side of the defence. Some of them are engaged in a hundred different transactions connected with as many persons in the same day, and yet come forward and speak with an accuracy and emphasis, even of minutest events, and with a recollection which it seems nothing can confuse or disturb, to describe events of the most ordinary description for years and months after they have occurred. This said Mr noble says, "I saw Barber in the accountant's office, on the 7th of April, with a woman whom he represented as Emma Slack. I am quite sure," he adds, "that was the female." Such positiveness, I think, speaks much more for his courage than his discretion. I do not mean to deny that Barber was there. The active and open participation by him in all these proceedings, I avouch as proof of his innocence.
138. Noble proceeds, that Barber stated that he had come to claim the dividends upon the stock of Ann Slack, deceased, and he professes to tell you, to five minutes, the time of day when these parties came, although he adds, that he has no doubt that more than a hundred persons came to the same department in the course of that day. Indeed, he says this is his own expression, "I might say hundreds."
139. THOMAS GROSS proves the giving of an order for the payment of the money, ROBERT GUNSTONE DOVER, that the order was brought to him to be cashed, that the figures in pencil at the back of the order described the moneys to be given for the order. Those figures are proved by Mr Wheeler to be Barber's. He says that Barber carried the gold in a bag. I have already made many observations upon this fact, and therefore will not repeat them, but will merely take leave to remind you that the lady was lame in both hands. GEORGE WOOLFE GOUGH, a clerk in the drawing office, speaks to the identity of Mrs Sanders.
140. (here Mr Wilkins asked for a few minutes to recover from his exhaustion - the court accordingly adjourned for a short time. On reassembling, Mr Wilkins resumed.)
141. Gentlemen, when from sheer exhaustion I claimed the indulgence of the Court, I was about to call your attention to the evidence of Mr PHILPOTTS. He tells you that he has been acquainted with Fletcher for the last ten years, and that he has known Barber about half that time, but that he had never known him in any other character than that of a respectable attorney.
142. On the 7th of April he saw Fletcher in the rotunda of the Bank of England, and he told him that he had "a good job" for him. You will observe, that to my friend Mr Erle, Philpott's [sic] expression is, that "Barber had a good job for him," whereas, when cross

examined by Mr Greaves, he said that was not the expression, but that Fletcher had told him that, he, *Fletcher*, could “introduce him to a good job.” Now, had Fletcher made use of the expression attributed to him in the first instance, it would not constitute evidence against Barber, because Barber was not present. I have laid some stress in the different answers given by this Mr Philpotts, in reference to what he calls the “good job,” to show that, in point of fact, there is nothing in that statement prejudicial to Barber.

143. On the 7th of April, Philpotts proceeds, Barber came to his office, and introduced a female to him as Emma Slack, and you will bear this in mind, gentlemen, that there is nothing to justify the belief that Barber had ever heard her called by any other name, or that he had ever seen her in his life, until introduced by Fletcher. Indeed, it has been admitted that Barber was totally unacquainted before this transaction with Mrs Dorey or Mrs Sanders.
144. Philpotts says that Barber gave him instructions to sell £3,500 consols, standing in the name of Emma Slack, and at the same time stated that he expected Fletcher to meet him; and, I think that Fletcher's conduct when he does arrive, must convince you that Barber was waiting for, and acting under his instructions.
145. Philpotts says - “We went to the Bank, where an order was given to me, and I signed to the identity of Emma Slack.” Oh, if poor Barber had done this how vain would all my efforts be to urge any explanation consistent with his innocence, and yet Mr Philpotts is treated as a man of character and [46] truth - one whose evidence is brought to tell against my client. I did not mean to impugn Philpott's [sic] character, but I only ask for the same justice for poor Barber.
146. Philpotts got an order to go to the drawing office, that order he handed to Barber, and left Barber and the female to receive the money. He sold the stock for £3,386 5s. to one Clement Smith, stockbroker, who paid in the money in three £1000 notes, and the rest in smaller notes and cash. Can any man explain to me the object of Mr Freshfield in withholding this man's evidence? Philpotts himself has admitted that he was present at the Mansion House at all the examinations. Why was he not called? Was it to frustrate the end sought to be attained by the legislature, in the recent Act of Parliament, giving to every prisoner the right to demand a written copy of the evidence upon which he was committed? Was it to serve as a trap - was it cruelly to increase the number of difficulties that they have already thrown in the way of my client's defence. Adjournment after adjournment took place at the Mansion House, to give them time and opportunity to adduce further evidence, all this time, there stood Mr Philpotts and Mr Freshfield, Mr Freshfield being, if believed, a most formidable witness for the prosecution, and yet his evidence is never adduced until answer is rendered impossible, and refutation impracticable.
147. This may show skill, and may develope [sic] what some people call tact [sic?], but it is at variance with justice, it is opposed to every dictate of humanity, and argues want a feeling that would disgrace inquisitorial persecutions of the most despotic cruelty.
148. But this Mr Philpotts, who affects an accuracy which must excite suspicion as to the whole of his statement, describes to you the dress of the female as she was attired twelve months

ago, and yet, when asked to describe her dress as she appeared at the Mansion House as many days ago, when he had every opportunity of observing her, when his attention would be by the very proceeding rivetted upon her - he cannot describe either its colour, its texture, or any peculiarity about it.

149. When asked for a reason why his attention should be drawn to her twelve months ago, he says, the changing of the £1,000 note excited his observation, and yet in the very next breath he states that that was a very common transaction.
150. BALLARD, CLEMENT SMITH, CHARLES HENRY MORTIMER, BREWER, THOMAS PHILLIPS, BENJAMIN HORNBY, JOHN MILLER, HENRY CLAYTON, JOSEPH DERER, HYATT, NELSON GRANT, VAN SUMNER and GRAT'TAN, are called to trace the notes. Their testimony I seek not to impugn, as it may all coexist with Barber's innocence.
151. The next witness is called for the purpose of tracing £2,000 pounds to the hands of Fletcher, and 1,000 [sic] to the hands of Mrs Dorey. And you will remember GORSUCH'S description of the gold, and the £1,000 note, exhibited at Dorey's shop. Not a penny is traced to Barber.
152. EDWARD GILL, a clerk in the bank at Bristol, proves that Sanders deposited £1,000 in the Bristol bank.
153. DANIEL FORRESTER gives the history of his search for the Sanders's, He describes the ransacking [sic] Barber's offices, and states that he found all the papers referring to this transaction bound up together at Barber's office, with the name of "Slack" on the outside, in large letters, in Barber's handwriting, and this, mind, again, gentlemen, I beseech you, is three weeks after the all important visit of Mr Freshfield.
154. I have now given an analysis of the evidence that has been brought forward to make out this charge, and it will be important for you to remember, gentlemen, that from the first moment of Barber's apprehension up to the present, Barber's defence has been the same, he *has not varied in one single statement* and although the Bank authorities have been exercising a vigilance as it were unparalleled in the history of prosecutions, *they have never been able to convict him of one inconsistency, prevarication, or contradiction*, and, weak as he may appear in his present miserable condition, he defies his persecutors with all their powers to remove him from the stronghold of truth. His history has been retraced from his starting in the world, his acquaintances have been catechised and cross-examined, his habits of life have been scanned and scrutinised, his pecuniary resources are known to be drained to a farthing, his every paper has been read with a microscopic eye - from the first discovery of this forgery, the Forresters have been watching his goings out and his comings in, his uprisings and his downyings, and yet after all this scrutiny - all this unsleeping vigilance, they can urge no fact against him - nothing but inference - the inference of suspicion - the inference of hate - the inference of ingenuity - the joint offspring of all seeking to justify its deformities - that injustice can urge against him.



155. Come we now, gentlemen, to the testimony of Mr William James Freshfield. He says, "I am secretary to the Bank of England. I have a memorandum which [47] I made at the time. I told him I called upon him from the Bank of England with reference to an amount of stock which had been transferred from the name of Miss Ann Slack under a will which appeared to have been proved by him, and which was irregular. He remembered the transaction, that Miss Emma Slack came to him with the will, which was quite regular, that the property was mentioned in the will, that she had stated her aunt had died about six weeks before, that he got the will proved and got her the money, and this was all he knew of the business. I asked him who the lady was? He said she resided in some street out of Holborn, and was a most respectable person. I asked him if she was introduced to him, and by whom? He said, 'Yes he had no doubt she was, but he could not recollect by whom, that he would endeavour to recal [sic] the fact to mind, that it was a mere matter of business, and he knew nothing more of it.' I told him that was quite inconsistent with the fact, for that he had himself been in communication with Captain Foskett some months before the alleged death of Miss Ann Slack respecting this very property. He said at first that he had certainly had some communication with Captain Foskett, but not, he thought, respecting this property, but he could not recollect. I told him his letters were distinctly respecting this property of Miss Ann Slack. After some hesitation he said it might be so, that he would not deny it, but it was a mere matter of business, and he did not feel authorised in disclosing the affairs of his clients. I told him I did not wish him to tell me more than he chose, that I should not at all press him, but that it was necessary I should apprise him that a fraud and forgery had been committed, and that he was plainly implicated in the transaction by the fact that he had been inquiring and negotiating respecting this very property six months before the alleged death of Miss Ann Slack, and before the right of his client accrued."
156. I have been engaged, gentlemen, for some years - actively engaged - in legal inquiry in different courts in many parts of England, but never since I have been in the profession did I witness such an exhibition as that on the part of Mr Freshfield, and I can only say, if such proceedings are to be tolerated in a court of justice, no man's liberty is safe - no man's reputation will be worth five minutes' purchase.
157. Gentlemen, I protest that it is utterly impossible that the conversation between Mr Freshfield and Barber could have taken place in the terms and order set down by him up on that paper, it bears upon the face of it palpable marks of skilful arrangement and premeditation. Mr Freshfield tells you that he committed the conversation to memory, and afterwards committed it to paper. If he did commit it to memory, let him explain to you, if he can, why he refused to trust his memory to-day!
158. Gentlemen, that conversation deposed to by Mr Fletcher [sic] extends over five closely-written pages of paper. Is there any one amongst you that would take upon himself on oath to deliver such a conversation in the terms and order deposed to by Mr Freshfield to-day? My memory is as good as most men's, but I should tremble to do so.
159. Do not be led away, gentlemen, because he is Mr Freshfield. Though he were the Emperor of the East, surrounded by all the pomp and power that can impose upon the weak or awe the servile, he is in the box, he can claim credit for no more than the attributes of man, he

is liable to all the infirmities, prone to the errors, and marked by the weakness of us all, nay, - if we are to estimate him by his conduct, weaker than the ordinary class of men, for he dare not trust to the ordinary resources the human understanding.

160. Gentlemen, I will not trust my own feelings to go accurately through the statement. I have already pointed out to you in what that statement is inconsistent with itself, at one time attributing fear to Mr Barber, at another time expressing his indignation, at one time expressing reluctance to reveal information, at another courting the fullest inquiry, and pointing to his book and documents for the satisfaction of his inquisitor, leading, Mr Freshfield says, to his conviction that Barber was guilty, and yet prompting him to leave the guilty man with the door of escape wide open, and the facilities of further deception undisturbed, in point of fact, if Mr Freshfield's statement be true, exhibiting a remissness that almost amounts to connivance at guilt.
161. Oh! but, said my learned friend, Barber ought at once to have given up the name of his client, and to have furnished a full and clear account of all that had preceded. I take leave to join issue with my friend, and you will decide between us. In my opinion, had Barber, under existing circumstances, given up the name of his client, developed his instructions, and implicated those whom he had before revered, trusted, and esteemed, in my opinion he would have exhibited a pusillanimity that would have amounted to a meanness, and violated a confidence that would have stamped him with disgrace. He believed, as he stated to Mr Freshfield at this [48] interview, that all would be proved to be right, that Miss Slack was a respectable woman, that his informant was a respectable man, and that Mr Freshfield's apprehensions had been excited by some mistake. Believing this, he acted wisely and humanely in not involving, without further investigation and inquiry, other parties in an accusation that he doubted not would, in the end, turn out to be without foundation, and which could only lead to distress and agitate those whom he respected and esteemed.
162. Mr Freshfield's reasoning is as little entitled to respect, in my judgment, as was his mode of giving his evidence. "I told him," said he, "that his statement was quite inconsistent with the fact that he had himself been in communication with Captain Foscett some months before the alleged death of Miss Ann Slack, respecting this property." Not at all inconsistent, when you take into account the information received from Christmas through Fletcher - the confidence that Barber reposed in Fletcher, and the fact that at the very time when Barber was in correspondence with Captain Foscett, all was conjecture respecting the owner or claimant of this property, and that whether the party were at that time alive or dead, could only be a matter of surmise.
163. Does not Mr Barber himself state his reason for withholding further information at that interview? Why, what does Mr Freshfield himself say? That "Barber told him that he did not feel authorised in disclosing the name of his client."
164. Gentlemen, it is no luxury to me to disparage the fair fame of any man. Mr Freshfield is to me an utter stranger, for him, personally it is impossible to suppose that I can entertain any feeling of animosity. What I have said - what I do say - is in the painful discharge of a painful duty, but, being my duty, nothing shall tempt me to flinch from it. Gentlemen, I

defy you - if you apply the ordinary rules of human conduct to Mr Barber's behaviour after this visit - I defy you to treat him as a guilty man. All the powers of an all-powerful government were suspended over his head, threatenings which could not be mistaken were urged against him by one who could not, if he would, recede from prosecution, and yet, with unshaken nerve with an unblanched countenance, he pursues his ordinary course, and in the occupations of the morrow, forgets the threatenings of to-day.

165. If I had nothing else to rely upon, this one fact I urge, to make one triumphant answer to all Mr Freshfield's forced reasoning, and his authoritative accusations. Truth is fearless, innocence is bold, falsehood is watchful in its glance, cautious and wary in its pace, guilt is always characterised and accompanied by cowardice. It has been well said that "words are the counters of wise men, and the money of fools." It would require but small ingenuity to refute the statement of Mr Freshfield, with that all-important fact, and Mr Barber's fearlessness I would oppose to volume of such statements.
166. It seems to me, gentlemen, that the whole of poor Barber's hardships and difficulties are attributable to his constancy and devotedness to his client. Had he given the information required by Mr Freshfield at this interview, I have very little doubt that he would now have been a witness instead of a prisoner.
167. Mr SAMUEL R GOODMAN is called to prove that he was present at the Mansion House when Barber examined Fletcher, and Fletcher there made certain statements, which they have taken care today not to put in. This, gentlemen, is a summary of the whole of the evidence that has been adduced on the part of the prosecution.
168. Look at the case from beginning to end, whether at the proctor's or at the Bank, with Captain Foskett or Mr Baxter, with Mr Philpotts or Mr Wills, - in every transaction you find Barber publicly and personally engaged, every transaction in which he is engaged is purely professional, and such as must have been effected by a professional man. The letters are written in the name of Barber and Bircham, answers are sent to Barber's office, directed to Barber and Bircham, those letters were of necessity open to the inspection of every person in the office - of the clerks, and of Mr Bircham himself, whose interest in the concern would prompt him to inquire into and scrutinise every transaction in the office. The letters are written by a clerk, and signed only by Barber.
169. Many portions of the business are transacted by Mr Bircham in its early and latter stages. All this you will do well to consider. What Barber knew, Bircham knew, what Barber should have suspected, so should Bircham, if Barber be censurable, so is Bircham. The one is on his trial, the other they have not ventured to call.
170. Fletcher is seen only when no risk was to be encountered, at Abbots Langley - in private conference with Christmas, waiting in the outer avenues of the Bank, whilst the investigation is going forward, appearing only when the money has been obtained, Fletcher is found in possession of the greater portion of the money, Barber without a penny.
171. A few words, gentlemen, and I have done. Before returning your verdict, for a [49] few short moments reflect upon your own privileges and blessings, direct your attention to

those homes from which you have been called, think on the anxious hearts awaiting your return, think on the joy of the smile that will greet you. Let the void in your domestic circle, occasioned by your short absence from the caresses of those whom you love and cherish, induce you to think with trembling upon that long absence, without the hope of return, which must follow an adverse verdict in this case. And, oh! gentlemen, above all, in the short time allowed you for deliberation, calculate, as far as the power of your minds will reach, the inestimable worth of a good name. Beware, oh! beware how you take from one, hitherto a light and an ornament in the sphere in which he moved, these and many other blessings that your own sympathies and imaginings will present to your view. I wish not to steal a verdict from your sympathies, but I lay these considerations before you to awaken your senses, that you may be the better judge. I ask you to return a verdict in accordance with the dictates of that holy religion by whose precepts and principles we should seek to prepare ourselves for that last judgement that must reach us all.

172. Let your verdict be in obedience to the still, but imperative voice of reason. Let no popular clamour deter you from your duty. Popular feeling! what is it? – what its index? Look to the vane of Folly's temple, that which but now pointed to the earth – rudely turned by the gusts of passion and of faction, turns to its opposite point. Popular clamour! what is it? It is that loud shout that but yesterday was heard to cry "Long live Pompey!" It is that loud voice that, from the chimney tops, was heard to shout, "Long live Pompey!" and to-day cries out, "A holiday!" and strews with flowers the path of him who rides into Rome – his chariot wheels stained with Pompey's blood. It is that unmeaning outcry that yesterday, ascending up to heaven's portals, proclaimed "Hosannah to the Highest," and to-day, with a demoniacal ferocity, cries out, "Away with him, crucify him!"
173. Oh no, gentlemen, let not popular clamour break in upon the quietude of your sanctuary. Without affectation I beseech you to invoke His power who knows the secrets of all hearts, to aid you in your investigation and search after truth. I believe my client innocent – solemnly and seriously I make that statement. With that belief operating on my mind I ask it, as one of the greatest boons to myself, that He may guide you to a verdict that shall snatch that man from sorrow and shame and restore him to society, chastened by affliction, and with energies and determinations for righteousness enlarged and strengthened by the difficulties he may be called upon to surmount.
174. I now leave the case in your hands, trusting to the humanity and wisdom of the judge, and the honest independence of the jury, to supply my defects and to shield my client from the power oppressively hurled against him.

[ends]

## Appendix 15 Closing prosecution speech in *Slack*

### Closing of Mr. Erle QC from *The Times*<sup>36</sup>

#### [Introduction]

1. Mr. Erle then rose to reply on behalf of the prosecution, and said he must first tender his thanks for all the observations which had been made by all the counsel for the prisoners upon the fair manner in which he (Mr. Erle) had opened the case for the prosecution; although he must say that he was rather surprised that the learned counsel should deem it necessary to comment upon that, as it was quite evident that the parties concerned for the prosecution could have but the same interest in common with the jury and the public to investigate these most remarkable transactions. No one could for an instant question, that robberies to a most enormous extent had been perpetrated, and if they were not repressed property of no description whatever could be considered safe; it was therefore necessary for the public safety that these prosecutions should be carried on, and he, in common with the rest of the persons concerned, had no wish that the jury should convict one single person indicted unless they were satisfied that the evidence warranted their coming to such a conclusion.
2. He would therefore ask them to narrowly scrutinise the evidence, to watch with carefulness the bearings of the different facts, and give their verdict in accordance with the conclusion to be fairly drawn from them; and if they should warrant an acquittal to all or any of the prisoners at the bar, he for one should feel quite satisfied with such a decision.

#### [Nonsense from Wilkins]

3. With regard to some of the observations made use of by the learned counsel Mr. Wilkins, who had addressed them with so much eloquence on behalf of Mr. Barber, there were some which he could not pass over without making a few remarks upon; he alluded to the time when that learned gentleman warned the jury against the arts which might be practised by an advocate in reply, evidently intending to prejudice him (Mr. Erle) in the minds of the jury at the very time that he (Mr. Wilkins) was making use of all the artifices that a skilful and eloquent advocate could resort to for his client; for he had told the jury he did not wish to steal a verdict from them - that he did not wish to enlist their sympathies for his client, and in the same breath drew a most moving picture between the home of honesty and industry, and the position which Mr. Barber was then placed in. Now, such remarks were wholly beside the question which the jury had to decide, and were only calculated to distract their minds and lead them from the strict path of duty which they were bound to follow; for although sympathy and humanity might lead them in one direction, if they were afterwards satisfied of the guilt of any of the prisoners it was their stern duty to give a verdict in accordance with such conviction, and to pursue such a course was in his (Mr. Erle's) judgment the best humanity after all.

#### [Complaints about the prosecution by Wilkins]

4. Complaints had, however, been made that the prosecution against Mr. Barber had been carried on in an acrimonious and vindictive spirit; now, he would challenge the parties concerned for the defence to show that anything had been done which was not perfectly

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<sup>36</sup> *The Times* (1844) 'The Will Forgeries' 20 April.

consistent with the proper and due administration of justice. What motive could they have in pursuing a different mode of treatment for Mr. Barber to that of any other person similarly charged with such a grave offence? and, on the other hand, what reason was there? Did the facts of the case warrant that the law should be turned aside or relaxed in this particular instance more than in others?

5. In his opening speech he (Mr. Erle) had confined his observations to those facts which were necessary to make the tale intelligible to them, without going into all the minutiae of the case; for sometimes assertions were put in counsel's briefs which it turned out were not capable of proof, and facts were alleged which were not admissible in evidence; whereas, in this instance, not one single assertion had been made by him but what was afterwards proved by the testimony of the different witnesses. He would then proceed to call their attention to the evidence as it affected the different prisoners, with the exception of the case of Mrs. Dorey, which had been drawn from their consideration by her having pleaded guilty to the whole charge.

#### [Fletcher]

6. The first case that he should allude to was that of Fletcher, and he enters upon the scene in the autumn of the year 1842; that was the time when he obtained the information from Mr. Christmas respecting the stock, a fact which must, he thought, be admitted by all his learned friends. Well, after Fletcher had obtained this information, he communicates the result of it to Barber beyond all doubt, for it was proved in evidence that shortly after the inquiries of Fletcher at the Bank Mr. Barber put himself in communication with Captain Foskett, the result of which was the obtainment of the signature of Miss Anne Slack. This signature is given to Fletcher, and by him conveyed to Mr. Christmas, who compares it with the power of attorney given by Miss Slack to Mr. Hulme; it is subsequently returned to Mr. Barber, with an intimation from Mr. Christmas that although the writing was in some respects similar, the latter one was of a lighter description; and Mr. Barber then restores it to Captain Foskett.
7. It is, therefore, established in evidence that the two prisoners, Barber and Fletcher, were in communication together, and obtained information to satisfy them that the real owner of the stock was totally ignorant of her right in respect of that stock. There was a clear way therefore opened, if they thought fit, of attempting with impunity to obtain possession of the stock either by fraud or forgery; at any rate, the turning up of the real party was very doubtful, and therefore there was but little interference to be dreaded in that quarter.
8. In order to obtain the stock it was necessary that a will should be forged; and, as a preliminary step for such a purpose, Mr. Jordan swears that Fletcher procured the registration of the death of Anne Slack. It was not necessary that a funeral should take place, and he thought the jury would be convinced that Jordan was right in his identification of Fletcher from the fact that they were in each other's company a long time for such a transaction, for Jordan had reason to doubt the correctness of Mr. Fletcher's account, and made various inquiries, for which reason he had plenty of opportunity of observing the man's features; and, moreover, after having been shown a number of persons at the Mansion-house, he had, the instant he entered Fletcher's cell, picked him out as the man.

9. These were the whole of the facts that preceded the publication of the forged will; and with respect to the acts which followed that daring act, he (Mr. Erle) had been struck by an observation of one of the jury, and was fully of opinion that the subsequent conduct and acts of a party threw a brilliant light upon what preceded it, and tended to make it out as one whole and entire transaction.
10. There could be no doubt that in the autumn of 1842 the £3,500 stock was marked down as a source of profit, either by obtaining a handsome premium for the information which might be afforded to the real owner, or that the stock itself should be obtained by some means. A will was in consequence prepared, a person found to pass as the executrix, and when the day of harvest was drawing near, Fletcher was found conversing with Mr. Philpott, and telling him that he would shortly introduce him to a good job.

**[Distribution of proceeds]**

11. On the day appointed Fletcher is found waiting whilst Philpott obtains possession of the money, and on Philpott's return to the Rotunda he hands over the money to Mr. Barber, and then a conversation takes place between Mr. Barber, Fletcher, and Mrs. Sanders, when it is agreed that one of the notes for £1,000 shall be changed into gold.
12. The proceeds of this fraud he would submit constituted one common fund; and what was the mode of distribution? Out of the three £1000 notes one of them is traced to Mrs. Dorey and Mrs. Sanders, another is turned into gold at the time, and the other is changed into gold on the 10th of April following, with the name of Miss Slack upon it in Fletcher's handwriting.
13. Mr. Justice WILLIAMS said there was a contradiction in the evidence respecting that endorsement.
14. Mr. ERLE resumed, and admitted that there certainly was a discrepancy on that point, for the clerk in the London and Westminster Bank had deposed that it was Fletcher's writing, whereas the clerk from Messrs. Stuckey's bank at Bristol asserted that it was Mr. Sanders's.
15. Now, it was a most material fact in that inquiry, and one upon which he (Mr. Erle) laid great weight, that one of the two £1,000 notes which constituted part of this plunder, and endorsed in the same way, one of them should be changed on the 13th of April, for which 500 sovereigns are given, and a £500 note, and that on that very day Mr. Fletcher paid 500 sovereigns into his bankers, whilst on the 18th of April that same £500 note is changed into gold, and on that very day Fletcher again is found paying 500 sovereigns into his banker's hands; and the other £1,000 note is changed into gold at the Bank on the 10th of April.
16. This was, he thought, a correct way to test the truth of whether it was Fletcher's endorsement or Sanders's; for during all this time it was not shown that Sanders was in London at all; and that which crowned the whole of the transaction was, that notwithstanding the whole of the information might have been obtained under the statute which had been alluded to by his friend Mr. Greaves, still Christmas receives, when the matter was finished, no less a sum than £100 for his trouble, and at the same time informs Fletcher that, as there were two persons of the name of Anne Slack, he had better be careful that it was all right. He would

leave that branch of the case in the jury's hands for them to say whether they had a doubt of the guilt of the parties.

**[Lydia Sanders]**

17. With respect to Lydia Sanders, it appeared that she left Bristol in the winter of 1842, and went into lodgings in Tottenham-court-road, which had been taken for her by her sister Mrs. Dorey. She resided there for a month and a day under the name of Miss Slack. Now, the identification of Lydia Sanders as being the person so lodged there, although so much disguised, had, he submitted, been clearly made out, for both the mother and daughter who had kept the house had spoken most positively to her being the same person, although they were repeatedly questioned both by the counsel for the prisoners and his Lordship himself. She is next recognised by Mr. Wills, the proctor, as being the administratrix who proved the will, and is again identified by Mr. Philpott as the person who came to the Bank into the name of Anne Slack to receive the stock and the dividends.
18. The most remarkable coincidence was to prove the truth of his hypothesis, that on the very 10th of April, the day on which the nefarious matter was completed, the fictitious Anne Slack disappears from Francis-street, Tottenham-court-road, and reappears at her sister's (Mrs. Dorey's) house as Mrs. Sanders, where she remains until the following Monday. On the following day she is known to go into the city a few hours after Mr. Dorey, in his ignorance of the wicked persons he had to deal with, had shown the £1,000 note, and, on her return, is seen to carry a bag containing coin, apparently to the extent of 1,000 sovereigns.
19. On the Monday following she leaves town, and in the September her husband is found paying 1,000 sovereigns into his bank at a time when no doubt he considered that the storm had blown over. Was not that a chain of facts such as was not often laid before a jury, and quite sufficient to satisfy them of the guilty participation of each of the prisoners?

**[Barber]**

20. He would now come to the case which bore particularly against the prisoner Barber, and first of all he could not help remarking upon the eloquent and powerful appeal which had been made to them by his counsel, and to which they seemed to listen with such marked attention, and must at the same time caution them against being led away by any topics or illusions which were foreign to the matter they were called upon to decide.

*[Wilkins's eulogy to trial by jury]*

21. Mr. Wilkins had given them an elaborate description, and passed an eulogium upon trial by jury, which was subject of vital importance, and of great interest between a Government and the public, but could have no earthly reference to the question of the guilt or innocence of the prisoners at the bar; he would therefore earnestly call upon them to ponder well every fact that had been proved in this case, and never allow it to be said that the tendency and bearing of the evidence was one way, whilst they had been led to decide the other by the eloquence of a clever and skilful advocate. He hoped that when he had finished, and when his Lordship had summed up, and they should have retired to consider their verdict, they would not allow the speech of any counsel whatever, neither of him nor his learned friend (Mr. Wilkins), nay, not even comments at his Lordship himself, to have any weight or bias upon their judgments, further than as a guide for an elucidation of the facts of the case, and



that by the facts themselves, and by the fact alone as proved, they would be influenced in coming to their verdict.

*[William's acts perpetrated the fraud]*

22. With respect, then, to the case of the prisoner Barber, there was no doubt whatever that he wore the outward and visible mark of crime about him, - that it was through him that the fraud had been perpetrated. There could be no contest between him and his learned friend upon that point; the question of intent was the only one in dispute between them; that the will was forged was beyond a doubt; true it was that it had been uttered, that it had been passed without any difficulty, upon the responsibility of the prisoner Barber; he it was who presented it at the Bank, and he wrote for the re-transfer of the stock. Those acts of the prisoner Barber constituted the crime itself, as much as the stealing of property constituted larceny.

*[Intent]*

23. It was admitted that he was the man who did the deed in the way that had been detailed to them; but, says Mr. Wilkins, he acted solely as an attorney, conducting the business of an ordinary client, and he is a man more sinned against than sinning. That was the matter in dispute between them, that was the issue in the case, and upon that issue let the matter be decided. He would here observe, that he perfectly agreed with the learned counsel that there is no window in the human breast, through which it was possible to ascertain the intentions of an individual; it was therefore a question for the jury to infer from the conduct and acts of a man what were his real intentions; for when was it ever known in the annals of that court, that a thief when he came to dispose of stolen goods had told the receiver that they were stolen? But if it was shown that the party who brought the goods was a poor man, and that he disposed of them for a sum manifestly disproportionate to the real value of them, that he brought them under the shadow of the night, and carried them concealed, it was surely a question for the jury to say, whether at the time he purchased those goods the receiver did not know that they were stolen; and would not any prudent and honest man say by the facility which that person afforded for their disposal, and the inadequate price he gave, that he had held out to the wicked an advertisement for the sale of stolen property?
24. He would, therefore, on behalf of the public, in justice to the country, entreat them to give their utmost attention to the evidence, and look at the statements made by him and learned counsel for the prisoner, and then say which was entitled to the most weight.
25. He would divide the conduct of the prisoner Barber in this transaction into three parts - his conduct before the uttering of the will, his conduct at the time, and his conduct after the matter had been finished; and, first, he would assert that it was clear Barber and Fletcher had been consorted together in matters of this kind for some time previous.

*[Solicitor and client]*

26. The learned counsel had told them that he was only connected with Fletcher as solicitor and client, whereas he (Mr. Erle) charged that he was a guilty accomplice of Fletcher's, and must without a doubt had known that the duty he was performing was not the ordinary business of an attorney. If, therefore, he should satisfy them that Mr. Barber was not acting as any other professional man would have done, the foundation-stone of his learned friend's

argument was struck away, and his speech became a mere empty sound, which had occupied their attention and time for no purpose. It could not be said that it was the ordinary business of an attorney to make use of a secret respecting unclaimed dividends, to bargain and chaffer about that secret, and see how much money could be obtained for it; for that was the charge which he (Mr. Erle) brought against Mr. Barber - that he did co-operate with Fletcher, for years before, for those unprofessional purposes.

*[They knew the owner to be Ann Slack formerly of Smith-street, Chelsea]*

27. He would now call upon them to contemplate the state of the case in 1842. At that time they had discovered that the owner of this stock and the dividends was a person of the name of Anne Slack, a spinster, who had resided at Smith-street, Chelsea, and who had lodged with a person of the name of Leake; that the stock had been bought in in 1829, and had been unclaimed since 1832. All that they had, therefore, to do, was to find out a person answering that description; and could it be said that they did not find out a person who undoubtedly answered that description in every respect? In autumn, 1842, Fletcher goes down to Abbot's Langley, and makes inquiries about this Anne Slack, which ends in a correspondence between Mr. Barber and Captain Foscett.

*[Erle swallows Wilkins's argument that they thought Ann Slack was dead]*

28. At this time it was clear that the intention of the parties was to sell the secret to the real owner for a good reward; the assumption in their minds was that the party was dead, as the dividends had been for a long time previously unclaimed.

*[Lack of evidence of instructions from Fletcher as to the (fake) Somerset-house entry]*

29. He did not wish to press more than was necessary upon Mr. Barber's conduct, but, at the same time, as there was a statement in his second letter<sup>37</sup> to Captain Foscett, that he had found from an entry made in Somerset-house, that Miss Slack had died at Bath, he thought they had a right to ask for some proof that he was so instructed by Fletcher, if Mr. Wilkins's statement were correct - for surely there would be some charge in his book for an attendance, or his clerks could have proved a fact of the instructions, for almost everything an attorney did was capable of being proved.<sup>38</sup>

*[Fletcher knows the name Leake when he goes to Abbot's Langley]*

30. Mr. Barber then inquires of Captain Foscett, whether Miss Slack spells her name Anne or Ann; and, in answer, is informed, that she spells it with a final e - that she had resided at Smith-street, Chelsea, about 12 years before, with a person of the name of Leake. Now, Fletcher was well acquainted with the name of Leake, for he had inquired about it at Abbot's Langley some time before, and it would therefore be for the jury to say whether this was not a co-operation between the prisoners Barber and Fletcher?

*[First meeting with Captain Foscett]*

31. When they had ascertained to whom the stock belonged an interview takes place between Mr. Barber and Captain Foscett, at which further inquiries are made, and more particulars entered into; and the correspondence is then renewed, and the signature of Anne Slack is

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<sup>37</sup> Letter of 25 October 1842.

<sup>38</sup> It is true that there is no specific entry of these instructions in William's diary, although he was seeing Joshua regularly.

asked for and obtained. Moreover, at the interview Barber informs Captain Foskett that he is capable of obtaining unusual information at the Bank, and Captain Foskett tells Barber that Miss Slack's trustee was a person of the name of Hulme.

*[Clear that Ann of Abbot's Langley was the owner]*

32. He would invite them to pause here. It was clear that the name, the residence, and all the other descriptions of Miss Slack of Langley coincided with the person whom Mr. Barber was in search of; but, because Mr. Christmas said that her signature did not altogether tally with the signature to the power of attorney, it was to be assumed that she was not the real person.
33. After the signature had been returned, the communication between Mr. Barber and Captain Foskett is put an end to, and Mr. Barber informs Mr. Baxter that he will let him know when they had found the real person. Mr. Wilkins says he did so; that according to Mr. Baxter's own account he met Mr. Barber in Lincoln's-inn and had a conversation with him respecting this matter, and that he must then have told him. But, in opposition to that, Mr. Baxter says, that he believes he asked Mr. Barber if he had compared the signatures? Now, if this was the case, the meeting must have taken place before the proving of the will.

*[The argument about her age is an afterthought]*

34. It was further argued that the identity had not been made out, as Captain Foskett had stated Miss Slack's age to be about 27. Now, it was clear that was only an afterthought to eke out the case. He (Mr. Erle) had said before, and said again, and advisedly too, that no reasonable man could have had a shadow of a doubt but that the real owner had been discovered. Mr. Barber at that time himself said he believed so,<sup>39</sup> but that there was a point which required being cleared up. As no offer was made for the secret the treaty was closed, and nothing more was heard from Mr. Barber.

*[The second act – the false registration]*

35. And now commenced the second act of this drama. After it had been ascertained that Miss Slack was ignorant of her right to the stock in question, for Mr. Barber had been informed that she received her own dividends, on the 25th of February the curtain draws up, and the parties appear on the stage with a view of obtaining the stock itself for their own use.
36. The first step is the false registration of the death of an Anne Slack, an act which was perpetrated with the most consummate skill, and would be a surprising feat were it not a melancholy picture of human infamy. A woman takes a copy of this entry, and on the 9th of March a fictitious executrix is found in lodgings in Tottenham-court-road. On the 16th of March the respectable solicitor, Mr. Barber, walks into the proctor's office with this sham executrix, and obtains probate of the will for her in the name of Emma Slack, and by that means clothes her with a legal right to get the money from the Bank.

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<sup>39</sup> To Foskett: amongst other similar comments, Foskett said in evidence that 'at our interview, he expressed the opinion that Miss Slack was the party entitled to it'. His solicitor, Robert Baxter, also gave evidence that 'He said the description Captain Foskett gave coincided very much with the party for whom they were enquiring; but there was a discrepancy which could be cleared, if he could have Miss Slack's handwriting to compare with some document.'

37. Now, what could have passed during the time between the 9th of March and the 16th to prove to Mr. Barber that this could be a fair transaction?<sup>40</sup>
38. He had opened to them that Mr. Barber had received this woman and this will without any inquiry whatever, and he believed that all the eloquence of his learned friend would fail to convince them that that was not the case. The ground upon which he alleged that Mr. Barber's eyes must have been opened was, that the very party for whom so short a time before they had been searching should so opportunely fall into their mouths just as their inquiries had failed; moreover the will itself bore evident marks upon the face of it to Mr. Barber of being a forgery; for it purported to give £3,500 stock as the whole of the testatrix's property, and yet upon that she had never received any dividend for more than 10 years past. Now this was well known to Mr. Barber, for he proved the will under £5,000, which included the dividends due, and paid the proctor the money necessary for the duty. What could they, therefore, have supposed this said Anne Slack had been living upon for the last 10 years?
39. All that he wished for was to elucidate the truth, and if it could be made out that this was conducted by Mr. Barber as a professional man, and was an ordinary transaction, he (Mr. Erle) would acknowledge that the prosecution had failed. How was it that this party, who had been hunted for by them for months before, and whom they had treated as dead, should so opportunely turn up when least expected? The fact, too, of Fletcher having introduced the will was of itself suspicious, if it was an introduction, as Mr. Wilkins called it; for what could he have to do with Anne Slack's property - what interest had he in the matter?
40. It was painful for him to say so, but was not the whole acting of Mr. Barber more that of an accomplice than of a professional man? The will was proved, and Mr. Barber takes the executrix to the Bank; a great deal had been said, that everything done by Mr. Barber was done in an open and undisguised way. Why, was it not necessary that it should be so, for great crimes required persons of respectability to carry them through, and required them to be done with apparent honesty and fairness?

*[Barber's conduct at the Bank and the missing £600]*

41. The property was at length obtained, and it would be for the jury to say whether this was not the harvest that they had all been playing for? Mr. Barber's conduct at the Bank could not surely be said to be that of an ordinary solicitor. Why, the fact of his taking away £600 in gold was of itself suspicious; could he suppose that a female executrix could want such a sum in gold? There was no proof what became of that £600; it might have been handed back to the fictitious Miss Slack, but at any rate it was a suspicious circumstance. They depart, and this was the division of the spoil, - £600 in gold taken by Mr. Barber unaccounted for, £2,000 traced to Fletcher, and £1,000 to the prisoner Lydia Sanders.

*[Barber's conduct afterwards - withholding Fletcher's name from Freshfield]*

42. He now came to the conduct of Mr. Barber after the transaction. The whole question hanged, said the learned counsel for the prisoner, upon the question whether Mr. Barber acted throughout merely in the capacity of attorney; and so it did. A fraud of great magnitude had been practised upon the public; an attack had been made upon the funds, and no one

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<sup>40</sup> Indeed, William's diary shows that he was instructed by Joshua on 15 March 1943 that he had 'found' the owner and William took her to the proctor the next day!

knew to what extent it might have gone; and when it was discovered what part Mr. Barber had taken in the transaction, Mr. Freshfield, the solicitor to the bank, called upon him with a view of giving him an opportunity of explaining his conduct in the matter. At that interview Mr. Barber never disclosed the name of Mr. Fletcher, although asked to name the person who had introduced the business to him. The crime at that time was well known, and if Mr. Barber were an innocent man, he had the deepest interest in discovering who the guilty person was who had imposed upon him, and bring him to punishment.

43. From that time, which was on the 17th of November, until the 12th of December, when he was about to be committed by the Lord Mayor as a felon, he never disclosed the name of Fletcher at all, and not even then until he consulted for half an hour with Fletcher himself. Mr. Wilkins had asked him (Mr. Erle) whether he would have advised Mr. Barber to call Fletcher at that time? In answer to that he could only say, that were he an innocent man he would always recommend an accused to speak out; if not, to hold his tongue. Truth required no disguise - the more it was canvassed the more clear it appeared.

*[Literary pursuits – idle trash]*

44. With respect to all that have been said about Mr. Barber's literary pursuits and habits, he could not help saying that it was all idle trash; he could not speak calmly when such topics were introduced to screen a man who was charged with a crime which only a few years ago would have placed his life in jeopardy.

*[The attack on James Freshfield]*

45. In conclusion, he could not help expressing his deep regret that the learned counsel should have thought fit to make such an attack upon Mr. Freshfield. What was Mr. Freshfield's conduct that had called forth such unjust and unfair remarks? Why, he had acted as a man of undoubted honour and respectability would be expected to act; he had done an act of kindness to the prisoner Barber, - he had called upon him to ask for an explanation of his part in the transaction, before he made a charge against him to the Treasury; and the evidence of Mr. Freshfield was only given to show that at that interview, in the hour of inquiry, Barber refused to state who was the party who introduced the business to him. He said again he regretted the reflections which were made upon Mr. Freshfield's behaviour, but it would be for the jury to judge between him and Mr. Wilkins.
46. Mr. Freshfield had taken down in writing what passed at that interview within a short time after it took place, and because he refused to go through all that conversation without his notes, he was subjected to the lash of Mr. Wilkins. Now, Mr. Freshfield had stated that he had a distinct recollection of what passed without his memorandum, but wisely refused to repeat it, knowing that he would in all probability make some verbal inaccuracies, which the learned counsel would make an handle of in his comments to the jury.
47. Mr. Freshfield could have no object in doing anything to injure the prisoner, and it was but a mere idle calumny in anyone to say that he had any such object. He had no interest in the matter one way or the other; it was not a Bank prosecution.
48. With regard to the few immaterial words which Mr. Freshfield had omitted, Mr. Wilkins had tried, in a long and elaborate address to convince 12 of Mr. Freshfield's fellow-citizens that

on that account he was not to be believed upon his oath. Now, he would put it to the jury, whether those words had any more to do with the matter than "Good morning," or any other such civil salutation might have; and could it be said then, if Mr. Freshfield had omitted such words, that therefore all his other statements were to be discredited? It was only catching at a straw to throw obloquy and discredit upon an important witness.

49. There were some counsel who had the happy constitution of saying that every hostile witness was perjured, but he (Mr. Erle) would humbly submit that before such an accusation were hurled against such a man as Mr. Freshfield there ought to be some good grounds for such an assertion; but he must beg Mr. Freshfield's pardon for having taken the liberty to defend him, for he was sure his conduct required no vindication in the eyes of the world, and his character was far above being damaged by any accusation that had been made during this trial.

### **[Conclusion]**

50. He would now leave the case in the hands of the jury, calmly and dispassionately to decide whether Mr. Barber had made out to their satisfaction that he knew nothing whatever of the fraudulent intent of the different parties, and merely acted throughout as an ordinary professional man; and whether the charges in the indictment had been made out against all or any of the other prisoners.

[ends]

## Appendix 16 Summing up by Mr Justice Williams in *Slack*

### (1) Summing-up of Mr. Justice Williams from *The Times*<sup>41</sup>

1. Mr. Justice Williams then proceeded to address the jury. His Lordship said, that the inquiry in which they were now engaged was one of great importance as well to the public as to those who were more immediately interested in the decision at which the jury might arrive,- the prisoners at the bar. The learned counsel who had addressed the jury on behalf of the prisoner Barber had made many appeals to their sense of justice. To such appeals he (Mr. Justice Williams) could make no objection; the only doubt he entertained was whether such an appeal was in any measure requisite, for he entertained a confident assurance that the jury would zealously and conscientiously discharge their duty. Mr. Wilkins, the learned counsel for the prisoner Barber, had stated, that he entertained a conscientious belief in the innocence of his client; but he (the learned judge) wished to guard the jury against placing confidence in any statements, from however respectable quarters they might emanate; for the decision to which they came must be formed entirely upon the evidence. On the other hand, the jury were not to lend a more ready ear to the evidence on behalf of the prosecution, because great and important public interests might be involved in this case. What was required of them was, to give a fair and impartial consideration to the case, and to arrive at such a decision as, in their judgment, the facts might warrant. Although the investigation of this case had occupied a considerable portion of their time, the real question which they would have to decide might be reduced to a very narrow compass. Before he went further it was right for him to state that no proof whatever had been adduced of the actual forgery of the will, or to show by whom such forgery had been committed.
2. Mr. Erle begged to remind his Lordship that the prisoner Mrs. Dorey had pleaded guilty.
3. Mr. Greaves said there was no count in the indictment charging her with forgery.
4. The learned JUDGE said, that one count of the indictment charged the prisoners William Henry Barber and Lydia Sanders with having uttered a forged will, knowing it to be forged. The fact that the person who had actually perpetrated the forgery had not been discovered was of very trifling importance. The prisoner Fletcher was charged as an accessory before the fact, with procuring, inciting, and urging some person unknown to do and commit this felony. He might here observe that the actual presence of persons at the time of the commission of an offence was not necessary to constitute them accessories. It was quite enough if the jury were satisfied that the persons charged were aware of the guilty proceeding. He would now proceed to state to them the nature of this case.
5. It appeared that Miss Anne [sic] Slack, who had been called before them, became the owner, in 1829, of Consols to the amount of £3500, standing in the Bank books in the name of Anne Slack of Smith-street, Chelsea, spinster. It was also proved that the early dividends, up to January, 1832, were received by a person named Hulme. From 1832 to 1842 the dividends on this amount of stock were not claimed; and on the 6th of July, 1842, the stock was consequently transferred to the Commissioners for the Reduction of the

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<sup>41</sup> *The Times* (1844) 'The Will Forgeries' 20 April.

National Debt. There could be no doubt as to these facts; but there were others to which he would direct their attention which affected the prisoners jointly and severally.

6. He would proceed now to make such remarks as he deemed necessary upon the case, and he would afterwards read to them the evidence which had been adduced; but he begged to remind them that he had no right to dictate to them as to the construction they ought to put upon that evidence, and he begged them to reject any remarks of his which they might not deem just and warrantable.
7. The first prisoner to whom he would allude was Lydia Sanders, a married woman. It had been shown that in March, 1842 the prisoner Mrs. Dorey took lodgings in Francis-street, Tottenham-court-road, for a person in the name of Emma Slack, and immediately afterwards Lydia Sanders, under the name of Emma Slack, went to those lodgings. Mrs. Dorey visited her there from time to time, calling her by the name of Slack; and she did not quit those lodgings until the 7th of April, when the transaction now under investigation was entirely completed.
8. The identity of the prisoner Lydia Sanders depended in a great measure upon the evidence of the Nevilles, mother and daughter; and he thought from their statements there could be no doubt that she was the person who had resided in those lodgings under the name of Emma Slack. It was proved by the witness Gorsuch that Mrs. Sanders was at Mrs. Dorey's, on the 8th of April; that a note for £1,000 was exhibited there as a curiosity; and that Mrs. Sanders went out, and afterwards returned with a bag which apparently contained a large sum in gold. They would find that Mrs. Sanders was identified by three persons, with more or less certainty, as having been present at different periods of these transactions. Then the question for their consideration was – if Mrs. Sanders's object was not to personate Emma Slack, for what purpose did she assume that name?
9. He now came to the share which the prisoner Barber had taken in these transactions. It had been admitted, on both sides, that what had been termed by Mr. Erle the external and visible acting of Barber in this matter had apparently been the ordinary transactions of an attorney for an ordinary client. He might observe, with reference to the remark of one of the learned counsel, that Barber had throughout acted fairly and honestly, that much of the business connected with this case, as the probate of the will and the transfer of the stock, could only be transacted in open day and at public places. If a person forged upon any of the public offices he must necessarily travel through those offices at the ordinary and accustomed times when they were open for the transaction of business.
10. The learned gentlemen (Mr. Wilkins) had appealed to the jury on behalf of his client, Barber, and had put it to them whether he had or had not acted throughout the whole transaction as an ordinary attorney, and without any knowledge that the will upon which he had acted was forged or fictitious. That was the main question for the consideration of the jury in this case. They could entertain no doubt, he conceived, that the will was a forgery, for the name and description in the will coincided entirely with that of Miss Anne Slack, who had given evidence in this case, and who proved that the signature to the will was not in her handwriting.



11. Then with regard to the evidence affecting the prisoner Barber, the only point in which the counsel for the prosecution had shown that Barber had exceeded the ordinary conduct of an attorney was in having endorsed upon the order for the payment of the dividends the manner in which that payment was to be made, and that he received the £600 in gold and walked away with it. There was no proof of what afterwards became of that sum. It might be that he had returned it to the owner; but, on the other hand, he might not have done so. Unless they were of opinion that this £600 in sovereigns was taken away by Barber for his own use, they had not traced any portion of the money to his possession.<sup>42</sup> If there had been a corrupt engagement between the parties – conspiracy to commit both a fraud and a forgery – it was impossible to say what understanding might have existed among them with regard to the proceeds. On that subject, however, they must form their own judgment.
12. Barber, it appeared, was in partnership with a Mr. Bircham, who was not inculpated in any degree in this charge. Now, if in a partnership office any private business was transacted by one of the parties, the entry of such transactions would not be made in the partnership books; and in some cases, in order that the other partner might not be aware of such transactions, they were entirely concealed from him. It was, therefore, for the jury to consider how far the entries of the transaction now under investigation in the books at Barber's office led to an inference in his favour.
13. One part of this case which required their most earnest attention was that which referred to the negotiations which took place between Barber and Captain Foscett in the autumn of 1842. They had no knowledge of the reason which prompted the first communication from Barber to Captain Foscett and it had not been shown on whose behalf Barber communicated with that gentleman. Captain Foscett asked Barber on one occasion, "On whose behalf do you apply?" but it did not appear that any answer was given to that inquiry. The application could have no reference to the forged will. It would, he conceived, be important for them to pay special attention to the information which Barber had received from Captain Foscett, in connexion with his subsequent conduct.
14. It was proved in evidence that Barber had been apprised that, down to January, 1843, if not later, there was living at Captain Foscett's a lady of the name of Anne Slack, who had formerly resided in Smith-street, Chelsea, and was described as a spinster. So lately as March, 1843, also, a gentleman named Offley, in reply to an advertisement inserted in a newspaper, wrote to Barber stating that he knew a lady of the name of Anne Slack, who formerly resided in Smith-street, Chelsea, and who was then alive. It was for them to consider whether from these descriptions, which agreed entirely with the description of the Anne Slack in whose name the £3500 were lying in the Bank, Barber might be supposed to have a knowledge, at the time he obtained probate of the will, that the real Anne Slack was at that time living, and that consequently the will could not be hers.
15. Mr. WILKINS hoped his Lordship would pardon him for requesting him to call the attention of the jury to the imperfect and contradictory description Captain Foscett had given of his sister-in-law, Anne Slack.

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<sup>42</sup> The rather tortured syntax is as reported in *The Times*.

16. The learned JUDGE said, that Captain Foskett had admitted in his cross-examination that he might have said his sister in law was 27, or he might have said she was 40. Captain Foskett, he might observe, was not aware of the purpose for which these inquiries were made. It would be for the jury to say whether they considered that, after the correspondence between Barber and Captain Foskett, Barber was fully aware that Anne Slack, of Smith-street, Chelsea, was alive when he obtained probate of the will which purported to be hers.
17. With respect to the evidence of Mr. James Freshfield it was for the jury to determine how far they could rely upon his evidence. Mr. Freshfield, it appeared, informed Barber that a fraud and forgery had been committed, and that his character as a professional man was deeply implicated; and learned counsel for the prosecution (Mr. Erle) had said that if Barber had acted upon the instructions of a *bona fide* client, and had himself been imposed upon, he would naturally have said at once, "I have been imposed upon, and so have the public, but I will tell you who has imposed upon me." How far such conduct might have been expected from a professional man – a man of just and upright conduct – in an ordinary matter or business, he left it to the jury to determine.
18. The tendency of the evidence was undoubtedly to raise an inference against the prisoner Barber; whether it did so or not the jury must decide. The most important point for their consideration, as affecting Barber, was whether they were of opinion that he was aware of the existence of a person answering the description of the Anne Slack who professed to have executed the will on which he had obtained probate.
19. Mr. WILKINS begged again to remind their Lordships that it had been represented by Captain Foskett that the Anne Slack residing with him was 27 years of age, while the age of the lady who was represented to have executed the will would have been 68. The certificate of death showed the age; and a witness proved that it had been obtained by a woman.
20. Mr. ERLE.- And it was found in Barber's office.
21. The learned JUDGE said, it would be the duty of the jury to take into consideration all the documents, and then to say whether they conceived that Barber was in possession of such information that he must have known the will was a forgery.
22. Then, what was the case with regard to the prisoner Fletcher? It appeared, that in 1842 he had obtained information from a person of the name of Christmas, a clerk in the Bank, as to unclaimed dividends on stock. It had been said by the learned counsel for Fletcher, that the information he had received from Christmas went for nothing. But if the information obtained from Christmas was worthless, how was it that he received £100 for that information?
23. The witness Apsley and his wife spoke with great confidence to the identity of Fletcher, as a person who had, in the autumn of 1842, been making inquiries at Abbotts Langley respecting Miss Anne Slack. It was then proved, that on the 25th of February, 1843, a

person applied to Mr. Jordan [sic]<sup>43</sup>, deputy register of deaths and marriages for the district of Saint George's, Hanover-square, to register the death of a woman named Anne Slack; and such death was accordingly registered. It would be an important point for the jury to determine whether they considered that the person who made this registry was the prisoner Fletcher. If they believed that he had undoubtedly registered the death of a person, of whose decease there was no record whatever at Somerset-house; and on inquiry at the places to which the person who affected the registration had referred no tidings could be gained of a person named Anne Slack, nor of the person who had registered, and who gave his name Robert Hart,- if they believed that Fletcher was the man who had effected that registry, he had, undoubtedly given a fictitious name, although it had not been satisfactorily proved that the signature was in his handwriting.

24. It was for the jury to consider with what object and intent this step was taken – whether it was with reference to some future project, such as the tendering of this will for probate, which was done on the 16th of March.
25. It appeared also, that Fletcher was at the Bank of England at the time the proceeds of this fraudulent transaction were received on the 7th of April. It was clear also that on three several occasions, immediately subsequent to this transaction, Fletcher had paid large sums into his banker's. On the 10th of April he paid in £500 in gold; on the 18th of April, £480 in gold, and £20 in notes; and on the 30<sup>th</sup> of April, £1,000 in gold. That was the case against the prisoner Fletcher. The learned judge observed that, as he was now about to commence reading the evidence, the jury might wish to adjourn for a short time.
26. The Court then adjourned for a quarter of an hour, and on the return of the jury,
27. Mr. Justice WILLIAMS proceeded to read the whole of the evidence which had been given for the prosecution. The learned judge, after reading the evidence of Mr. J. Freshfield, observed that the jury must form their own judgment of the credit which was due to that witness in this particular transaction. The jury would probably be aware that any written memorandum made by a person at or near the time of any transaction, though not in itself evidence, might be used by the writer to refresh his memory if he should be called upon to give evidence on the subject. Mr. Freshfield had stated on his oath that he had a recollection of this particular transaction independently of the memorandum he possessed, and they could not, therefore, prevent him from referring to that document in order to refresh his memory.
28. The only difference between the memoranda<sup>44</sup> of Mr. Freshfield and those usually referred to by witnesses was, that Mr. Freshfield's seemed to be given with greater particularity than was usually the case. But he put it to the jury to consider whether if, after a particular transaction or conversation, they had written down with great care, as they believed *verbum verbo* [to a word; or, word for word], an account of it, they might not choose to abide by that statement, and whether, after giving evidence with the aid of such memoranda, they would be willing to repeat such evidence without it. The jury must judge, if they had been in Mr. Freshfield's situation, how far they might have been disposed to act as they [?sic,

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<sup>43</sup> William Prue Jorden.

<sup>44</sup> It is not clear why the plural is used here (and in the *Morning Post* report).

he] had done; and they must form their own opinion as to the propriety or impropriety of his conduct.

29. It was not his province to say anything about the Messrs. Freshfield, but it would be trifling to say, that during his professional career he had not heard something of those gentlemen.
30. Mr. Freshfield had, in his cross-examination, admitted that Barber expressed great indignation when he called upon him respecting the forged will. Mr. Freshfield said that he had designedly omitted to put that down in his statement and also that he had wilfully omitted to mention it in his examination-in-chief. The learned counsel, Mr. Wilkins, had put it to the jury that the wilful suppression of such a fact entirely vitiated the testimony of Mr. Freshfield and altogether affected his credibility. On the other hand, Mr. Erle, the counsel for the prosecution, had contended that the omission of this fact was altogether immaterial, and that it did not in the slightest degree diminish the value of Mr. Freshfield's testimony.
31. The object of that evidence, it was avowed, was to show that when Barber was informed that his character as an attorney was seriously impugned, he took no steps to clear himself from the imputation; while it was contended that, had he been innocent, he would at once have stated under whose instructions he had acted. If they conceived, from Mr. Freshfield's manner and demeanour, that this omission did not shake the rest of his evidence, they would give to that evidence such weight as in their judgment they considered it deserved. Mr. James Freshfield stated that he had taken no part whatever in these prosecutions, which were conducted by his brother, and by Mr. Weir, their clerk.
32. Mr. WILKINS respectfully requested his Lordship, as a matter of justice to his client, not only to narrate this transaction with the colouring which had been given to it for the prosecution, but also to give his (Mr. Wilkins) answer to it.

Mr. Justice WILLIAMS.- You contended that the witness was not to be believed.

Mr. WILKINS.- Yes, That was one point. But I also stated that Fletcher was Mr. Barber's client, and that Barber would have acted most unprofessionally and improperly if he had given up his client's name without some consultation with him. My third point was that, for three weeks after this interview with Mr. Freshfield my client, Barber, remained at his office.

Mr. Justice WILLIAMS.- It is not in evidence that Fletcher was Barber's client.

Mr. WILKINS.- My learned friend, Mr. Erle, stated it in his opening address.

Mr. Justice WILLIAMS.- There is no evidence before the jury to show that Fletcher was Barber's client.

Mr. WILKINS.- Your Lordship has said a good deal about inference, and I leave the jury to draw their own inference on this subject.

Mr. Justice WILLIAMS.- If they believe it, let them draw the inference.

33. The learned judge then went through the remaining evidence for the prosecution, and also read the statements of the witnesses to character called on behalf of the prisoner Barber.

His Lordship remarked, that in cases in which there was any reasonable doubt, undoubtedly character ought to be taken into account; but when the evidence was so strong that no reasonable doubt of guilt existed in the minds of the jury, mere character was of no avail against such evidence.

34. He had already made all the remarks he intended to offer with regard to the first prisoner to whom he had referred, Lydia Sanders. With respect to Barber the question was, whether this was a mere ordinary matter of business, Barber acting simply in his capacity as an attorney, or whether there was anything in the case to fix him with a guilty knowledge of the transaction – with a knowledge of the forgery.
35. He would not make any further remarks as to the case of Fletcher, merely observing that he considered the evidence with regard to his share of the transaction, which most required the attentive consideration of the jury was that of the witness Jordan.
36. With these remarks he would leave the case in the hands of the jury, who, he was satisfied would perform their important duty with caution and justice.

**(2) Summing-up of Mr. Justice Williams (from the *Morning Post*)<sup>45</sup>**

Mr. Justice Williams then proceeded to sum up the evidence.

Before going on with the evidence he would remind the Jury, for a moment, that the Learned Counsel for the prisoner Barber had made many passionate appeals to their sense of justice, and of the high obligations under which they laboured. To such an appeal he had no right to make any objection. The only doubt which he, the Learned Judge, entertained was, whether they were in any degree required, as he entertained a confident opinion that they, the jurors, stood in need of no urging to a zealous and conscientious discharge of their duty.

The counsel for Barber entertained a conscientious belief of the innocence of his client. That, however, was the question which they were to try, and they could take no statement from any person, however respectable, but must be guided wholly by the impressions raised by the evidence. Although the case of necessity extended itself to a great length, the question to be immediately submitted to them lay within a narrow compass. He would disengage the case, in their hearing, of all doubt and uncertainty as to its legal bearings, by laying before them only that which formed the substance of the charge. Of the actual forgery there was no proof at all. There is no evidence to show by whom the will in question was penned.

Mr. Erle – Mrs. Dorey has pleaded guilty to the whole offence.

Mr. Justice Williams – To all with which she is charged.

Mr. Stone – She was not charged with the forgery.

Mr. Justice Williams said he was aware of that – that there was no count in the indictment charging her with the forgery.

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<sup>45</sup> *Morning Post* (1844) 'The Will Forgeries. Second Case – The Verdict' 20 April.

The Learned Judge resumed – The want of proof of the actual forgery was of little legal import, for it was of no consequence by whom the will was forged. If it was a forged will, and Barber and others knew it to be so, the charge against them was sustained; that charge being, that they uttered the will, knowing it to be forged.

Fletcher was charged as an accessory to the crime. It was not necessary that there should be an actual presence in order to inculcate an accessory. If he was aware of what was going forward, and assisted in any way, he was an accessory before the fact.

He would clear the case of some other points, which were beyond all doubt, before going into the evidence of the points which were really at issue.

The real Miss Slack became the owner of Consols to the amount of £3,500, and that money had stood in the name of Anne Slack, of Smith-street, Chelsea, spinster. Further, that the dividends on that stock were received for her by a person of the name of Hulme up to the year 1832. It was also clear that from the year 1832 to 1842, these dividends remained unclaimed. The transfer of the stock to the commissioners of the national debt took place on the 6th of July, 1842, by reason of their having remained unclaimed for the preceding ten years. All these points were clear and unquestioned.

He would now come to the evidence applying jointly and separately to the prisoners. Any remark which he might make upon the evidence they were wholly to neglect. If, during what should follow, any opinion of his upon the evidence should transpire, he begged of them to reject it, if it savoured of a conclusion based upon any portion of the evidence. They were to be guided by the evidence alone. He would now go on and give them a general summary of the evidence as it bore upon the case.

The Learned Judge then went over, in the first place, the evidence as it bore against the prisoner, Lydia Sanders. It appeared that there were at least three witnesses who were present when she, at different periods, personated Emma Slack, in proving the will, receiving the property, &c.

As to the evidence against Barber, it was on both sides admitted that the external and visible acting, as Mr. Erle called it, was in the main of an ordinary appearance. In a great measure that must be the case where the business had to be transacted in public offices. Of course, such business must be performed in the day time, in public hours, at a public office; in no other way could a probate of a will be obtained, or a transfer of stock accomplished. In every such case, therefore, just or unjust, fair or unfair, the transactions of the attorney must appear to be of the ordinary business-like character. The question put by the Learned Counsel for the prisoner was, whether Barber did not act on those occasions in the ordinary manner in which any other person would have acted, if he had no knowledge at the time of the will being a forgery, and that certainly was the main and pressing question in this case.

It had been said, and said truly, that the hand which tendered the will for probate was Barber's. No doubt that was one of the questions raised in evidence and argument. He accompanied Emma Slack on that occasion, but the question was, did he, in so doing, act fairly as an attorney in the ordinary discharge of his duty, or had he a knowledge of the character of the will?

Before going further, he might probably say, that on the fact of the forgery of the will, the Jury, probably, would entertain no doubt. (The Learned Judge then went through some of the points which established that fact.)

The only point that the Learned Counsel for the prosecution had urged as inconsistent with the usual external bearing and conduct of an honest and conscientious attorney on this occasion was, that one of the orders was indorsed in the handwriting of Barber, for payment in £600 in gold, and £400 in notes, together with some smaller notes, and that he (Mr. Barber) received the £600 in gold, and walked away with it. There was no proof of what became of it after that. This circumstance was, therefore, open to a suspicion, and an inference might be raised by the way, that Barber had given it to the apparent proprietor Slack, or that he had retained it himself. If he had walked away and appropriated it to his own use, doubtless, it was greatly more than an ordinary remuneration for an attorney; but if he handed it over, then came the observation which had been laid before them, that there was no proof whatever that any part of this money had been received by Barber beyond the ordinary charges of an attorney on such an occasion. If there was a corrupt understanding between the parties, if they had all joined in a conspiracy to commit this fraud and forgery, then, of course, it would be impossible to say what was the understanding between them as to the disposal of the proceeds.

It had also been said that no papers had been produced from the office of Mr. Barber except such as were perfectly consistent with his innocence. It must, however, be borne in mind that Mr. Barber was in partnership with **Mr. Bircham, who was not even inculpated in the transaction**, and in a partnership office, where one party contemplated concealment from his partner, it was not likely that the papers in the office would contain more than the mere ordinary business details. But how far the circumstances of the contents of these papers afforded an inference in favour of Mr. Barber it was for the Jury to judge.

But there was a part of this case which he was now coming to which required their most earnest attention – he alluded to the negotiations which had taken place in the autumn and concluding part of the year 1842, between Mr. Barber and Captain Foscett, and which continued almost up to the commencement of the transactions now under investigation. What led to the original communication to Captain Foscett was left to suggestion, for on whose behalf Mr. Barber applied there was no proof. The question was asked by Captain Foscett, but he did not receive an answer to it. That application could have no reference to this will. It, in all probability, originated, as suggested, that Miss Anne Slack might, by probability, be entitled to something in the public funds, in the shape of unclaimed dividends or otherwise. It was quite clear that Barber announced it to be something for Miss Slack's benefit, for he inquired if Miss Slack had strong nerves, and could bear the announcement of an increase to her fortune of something like £10,000.

But it was the information which Mr. Barber got on that occasion which was the point of the greatest importance for the Jury to consider. He apprehended the Jury would find, from the evidence, that it was perfectly clear that in the month of January, if not later, Mr. Barber was fully aware that there was living with Captain Foscett a lady of the name of Anne Slack, who had formerly lived in Smith-street, Chelsea, who was a spinster, and then alive. The description of the testatrix on the face of the will was Anne Slack, spinster, formerly of Smith-street, Chelsea, but now of South Terrace, Pimlico. Now, the question was, whether the coincidence between these two descriptions, accompanied by the reference of Mr. Baxter, the London attorney of Miss Anne Slack, was such as must necessarily have raised the implication in Mr. Barber's mind that Anne Slack was at that time living, and consequently that the will must be a forgery. That was a very important point for the Jury to consider, and he presented it for their consideration. The object of that part of the case was not so much to enable the Jury to judge of the negotiation, as

to show them what information Mr. Barber then gained, and what inferences such information must necessarily have raised in his mind.

Mr. Wilkins called his Lordship's attention to the contradictory statements made by Captain Foscett in his description of Miss Slack. She might be twenty-seven or she might be forty, from Captain Foscett's description.

Mr. Justice Williams – Captain Foscett did not know why the question was put, and perhaps he saw no reason why he should give the information without knowing the motive of the inquiry.

After this came the evidence of Mr. Barber's subsequent conduct, and the most important of which was Mr. Freshfield's, who gave an account of his calling on Mr. Barber to inform him of the forgery, and to acquaint him that his conduct as a professional man was deeply involved in the transaction, and it was for the Jury to consider whether there was anything in that evidence which gave force to the suggestion sought to be raised by the prosecution against the prisoner Barber that, if he really had a *bona fide* client, and had been himself imposed upon, he would have taken that opportunity at once to have stated so, and have offered every assistance in investigating the transaction.

Mr. Wilkins begged to call the attention of his Lordship to the fact that Captain Foscett represented the lady to be twenty-seven, whilst the will spoke of her as a lady of sixty-eight. At least the certificate did.

Mr. Erle – The certificate was not proved.

Mr. Wilkins – Yes, the certificate was proved to have been found with the papers in Mr. Barber's office.

Mr. Justice Williams – The Jury would take the whole of the circumstances into their consideration, and they would examine and consider all the papers before they came to a decision on the question whether Barber was or not in possession of such information as must have led him to know that the will was a forgery.

The Learned Judge then referred to the evidence against Fletcher, and requested the Jury to direct their attention to the evidence of identity, and to say whether they were satisfied that the party described by the witnesses as making the various inquiries as to Miss Slack, obtaining the fictitious registration of Miss Slack's death, was Fletcher or not.

He had now concluded the general observations to which he wished to direct their attention, and would next proceed thorough [sic] the evidence in detail; but before he did so the Jury would probably wish to retire for a few minutes.

The Court and Jury then retired.

After a lapse of about 20 minutes, the Court sat again, and

Mr. Justice Williams proceeded to read the evidence adduced in the case. Having gone through to [sic] Jordan's<sup>46</sup> evidence, his Lordship said, remarks had been made as to Jordan's incapability to identify Fletcher. If the Jury believed that, of course that witness's statement would go for nothing. The Learned Counsel for the defence observed, that Jordan had identified Fletcher in prison, and that as the witness must have expected to find him there, the identification did not

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<sup>46</sup> William Prue Jorden.



imply that previous knowledge of him which would be manifested by the picking of him out from a number of other persons, without being told that there was any suspected person among them. The answer of the witness to that was, that he had been previously in several other cells in the prison and did not point out any person as Fletcher until he came to the place where he was, when [sic] witness at once identified him.

With respect to Miss Neville she said she had no doubt whatever that Mrs. Sanders was the person who represented herself as Miss Slack.

The evidence of Freshfield had been given from memoranda taken immediately after the facts to which it related occurred. He was questioned as to his capability of giving the same evidence without the assistance of his notes, and he said he could do so, but, perhaps, with some variation in the language. In his cross examination he stated that Barber had expressed great indignation during [sic] witness's interview with him, and that he (Freshfield) Had "designedly" (and he afterwards said "wilfully") omitted to state that circumstance in the memoranda which he had made. That omission had been dwelt upon by the counsel for the defence as affecting the character of Freshfield's testimony altogether, but Mr. Erle, in reply, observed that the manner and demeanour of Mr. Barber at the time were clearly and entirely immaterial. In that interview between Barber and Freshfield, Barber refused to give the name of his client, Fletcher. That circumstance was dwelt upon with great stress by the counsel for the prosecution.

His Lordship was proceeding to read the evidence of the next witness, when

Mr. Wilkins interrupted him, and requested, as a matter of justice to Barber, that his Lordship would not only give the animadversions on the part of the prosecution, but also his (Mr. Wilkins's) answer.

Mr. Justice Williams – I draw no inference, one way or the other.

Mr. Wilkins – Your Lordship has stated the construction put on Barber's refusal to give the name of his client, but you omitted to state the construction put upon it by me.

Mr. Justice Williams – One construction is that the witness is not to be believed.

Mr. Wilkins – That is one construction, and one to which I certainly adhere – but there is another, that Fletcher stated he was Barber's client; that it was improper for Barber to give up his client's name at that time, without consulting with him, and that Barber, after that announcement, was for three weeks engaged in his business as before.

The Judge – There is no evidence that Fletcher was his client.

Mr. Wilkins – Mr. Fletcher<sup>47</sup> [sic] opened it so.

The Judge – I cannot take any opening. There is no evidence before the Jury that Fletcher was Barber's client.

Mr. Wilkins – Your Lordship said a good deal about inference, and the Jury may infer that matter.

The Judge – They may if they choose, but there is no proof of it. If, upon this evidence, it appear, let it appear – you, gentlemen, are the judges upon that point. If the Learned Counsel

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<sup>47</sup> He meant, and may have said, Mr Erle – *The Times* has 'Mr Erle'. This might have simply been a mistake by the *Morning Post* reporter.

had listened attentively, he would have heard that I gave no point to any part of the evidence from beginning to end. I suppose he was not here to hear it.

Mr. Wilkins – I was, my Lord; I listened attentively to every word you said.

The Judge – I told the Jury they were no more bound to take any remark from me on the substance of the evidence, than from either of the Learned Counsel. That was the way I put the evidence. No remarks of mine are of any importance except when I state the law, which, of course, you take from me; the facts I do not attempt to take from your review.

Having read the remainder of the evidence, his Lordship remarked that the observations he had thought proper to make at the beginning were – first, explanatory of the charges, and in what manner they stood. He next stated certain facts that were clearly and undoubtedly proved on both sides, such as the transfer of the Three per Cent. Consols, the unclaimed dividends, &c.

He then mentioned the different modes in which the case was presented with respect to the different prisoners, stating at first, and last, that if he made any remark on the effect of the evidence that was absolutely to be rejected, and that the Jury were to judge for themselves in that respect.

With respect to Sanders, he (Mr. Justice Williams) had said all he wished to say.

As to Barber, the question was, whether or not the transactions in which he was concerned were conducted as the ordinary transactions of a man of his profession (which appeared to be that of an attorney) would be conducted – whether the Jury were satisfied that when he produced the will for the purpose of obtaining probate he was not at that time aware that that will was a forgery – and whether he did so with the knowledge that it was a transaction so out of the ordinary course of business that he must have known the will to be a forgery.

With regard to the prisoner Fletcher, the principal evidence affecting him was that of Jordan, which it was important for them to consider.

His Lordship concluded by informing the Jury that they might have whatever papers were proved in the progress of the case.

At the request of Mr. Wilkins, all the papers were handed to the Jury, who retired to consider their verdict at a quarter to five 5 o'clock.

[ends]

## Appendix 17 Barber's speech to the Court

### William Henry Barber's Unsworn Statement to the Court on 22 April 1844<sup>48</sup>

1. Barber then addressed their Lordships to the following effect: may it please your Lordships, I am quite aware that the question which has just been put to me by the clerk of Arraignment is rather whether I have any topic of a legal nature to urge, than whether I have any general observations to address to you with respect to this case. I hope, however, that your Lordships will favour me with your indulgence for a few moments.
2. I can never be too grateful to my counsel for the exertions he has made in my behalf; his conduct deserves my eternal gratitude. Certainly, if at the conclusion of his speech in my defence he had asked whether I thought it necessary to call witnesses, I should have replied in the negative.
3. I had, however, very important evidence that might have been offered; I could have shown that a system of deception had been practised on me by this man Fletcher. I have no desire to increase his difficulties, but my misfortunes are solely attributable to him. I have no desire to say one word that can add to his troubles, but I must say - and I declare it in the face of Heaven - that my misery is alone attributable to that confidence which he had built up in my mind, and which confidence was most grossly abused.
4. By your Lordships' permission I will explain the course which was pursued towards me by Fletcher in the case of Emma Slack. The correspondence between Captain Foskett and myself has already been before your Lordships, but the most important feature in the history of those negotiations I could not prove before you in evidence. It was this - Fletcher said to me, "It appears highly probable that this young lady Miss Anne Slack, of Abbots Langley, is the party entitled to the stock."
5. I said, "I think at present there is not much doubt of it; from the description of her residence, and other circumstances, I believe she is the owner of that stock."
6. Fletcher replied, "There is a means by which we can decide that completely; if you will procure her handwriting, I will have it compared with the signature in the Bank Books."
7. I did procure the signature of Miss Slack, as your Lordships are aware, and I sent Mr. Baxter's letter containing it, to Fletcher, in order that it might be compared. Fletcher got that writing compared, as has been proved, by the witness Christmas; but the report which Fletcher gave me of the result of that comparison I have no means of proving.
8. I declare most solemnly, by all the responsibilities of my present position, that Fletcher stated to me, when he returned Mr. Baxter's letter, "The handwriting does not agree at all; my friend has compared the signature with that in the Bank Books. The signature in the Bank Books is that of an older person. This is the writing of a young lady, and it is certain that she is not the owner of this stock."

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<sup>48</sup> *The Times* (1844) 'The Will Forgeries' 23 April.

9. I expressed my regret and surprise.
10. Fletcher said, "I am satisfied this is the case for another reason. The lady whose stock is in the Bank executed a power of attorney before the dividends ceased to be received."
11. The dividends had not been received as your Lordships are aware, for upwards of 10 years. Captain Foskett had informed me that his sister-in-law was 27 or 28 years of age. That he admitted in evidence.
12. Fletcher said, "This young lady cannot be the owner of the stock, for 10 years ago she would not have been competent to execute a power of attorney, and it seems that such an instrument was executed by the real owner of the stock."
13. Coupling these two facts - the difference in the handwriting and the age of the lady - I arrived at the certain conclusion that Miss Slack, of Abbots Langley, could not be the owner of this stock.
14. But I beg your Lordships' attention to another point connected with this part of the case. In my letter to Mr. Baxter I promised, if the right owner should be found, that I would acquaint him, for the satisfaction of the young lady and her friends. I either intended to keep that promise or I did not. If I intended to keep it; your Lordships must be convinced that I had no guilty mind. If I did not intend to keep it, it is scarcely probable that I should have made it, for it was perfectly unnecessary.
15. I did make that promise. I intended to keep it; and I solemnly swear I did keep it. After this Emma Slack had come forward I did acquaint Mr. Baxter. I do not know whether that gentleman is now in court, but I met him in Lincoln's-inn-fields soon after the property was claimed, and I said - "Mr. Baxter, the party who is really the owner of the property about which I was in correspondence with you has come forward, and has produced the will."
16. He replied, "Oh, indeed," or something to that effect, and there my communication on the subject dropped. That casual meeting was a great misfortune to me, for otherwise I should have written a letter, which would have appeared upon my books; but, having made this verbal communication to Mr. Baxter, I did not think it necessary to take any further proceeding.
17. I have said that Fletcher deceived me with regard to the handwriting. I am not quite sure whether he himself was not deceived; but of that I have no means of judging. It appears, however, from the evidence of Christmas that he gave a somewhat doubtful statement to Fletcher on the subject of the handwriting; but, whether he did so or not, the report Fletcher made to me was, that the young lady at Abbots Langley was not the owner of the stock. I hold in my hand a statement in Fletcher's handwriting to that effect, which should have been part of my defence. It was given to me as an extract from a letter which Fletcher said he had received from his friend in the bank. I never knew who that friend was until these proceedings commenced.

18. The letter is in these words - "I beg to observe that there is other stock in the Bank, standing in the name of Anne Slack, formerly of Smith-street, Chelsea, but now of Abbots Langley, Herts; but she is not the same person."
19. During the time this matter was in progress I was conducting a case at the Croydon assizes. My partner attended to the business equally with myself, and so did my clerks. My partner lodged the probate at the Bank and wrote two or three times to Miss Slack on the subject.
20. This instruction was given by Fletcher to one of our clerks:- "Miss Anne Slack, of Abbots Langley, Herts, is not the same person as Anne Slack, late of Smith-street, Chelsea, whose will has been lately registered, and that Miss Slack of Abbots Langley is still living."
21. Fletcher. - I certainly never gave such instruction.
22. Barber (handing the paper from which she was reading to Fletcher.)- do you admit that to be your handwriting? You told me the two signatures did not correspond!
23. Fletcher was understood to answer in the affirmative.
24. Barber continued - That is conclusive evidence. Several circumstances were urged against me by Mr. Erle, which I wish to explain. It will be remembered that I said to Captain Foskett, in speaking of the age of the claimant, that "40 would do." Counsel for the prosecution endeavoured to construe that circumstance to my disadvantage. What I meant was, that 40 would be consistent with the age of the owner of the stock.
25. How was it that Captain Foskett stated the age of Miss Slack to be 27? He married her sister. She lived in his house. Was it not a most extraordinary thing that he should have imagined her to be 27, when she was 37 years of age?
26. When Miss Anne Slack was before the Lord Mayor I cross examined her, I regret to say, with some want of courtesy, on account of which, probably, some degree of acrimony has been exhibited towards me by her friends. But consider the situation in which I was placed. I believed that she was not the owner of the property; and I cross examined her at considerable length as to her age. The only answer I have to give to this charge is that I was misled by Fletcher; if he has been misled, it is for him to show it. I have some letters from him which will most clearly show either that he was misled himself, or that he misled me.
27. On the 29th of December, 1842, I received a long letter from Fletcher, which I will read to your Lordships. I may observe that, in his communications with me, Fletcher almost invariably mixes up a variety of other matters with the regular business he mentions. The letter is in these terms:-

"Dear Sir, - I received your letter, which I intended to have answered before, but have been prevented in consequence of having been extremely ill with a very bad cold. I should be most happy to allow your note of hand to stand over for the time you mention; but having all my spare cash now fully employed for some time to come, I am under the necessity of requesting the favour of you to allow me to receive the cash on it before the 14th of January, 1843, being one month after the note being due."

28. This application refers to a small sum of money which Fletcher had lent me, and for which I had given him a note of hand. This was not, I submit, my Lords, the sort of letter which would have been written by a man to another person he was engaged with him in a fraudulent scheme. The letter, after referring to a matter of business, proceeds,-
- “Miss Slack's letter has been handed to my friend, and I shall hear from him in the course of a day or two, when I will let you know the result.”
29. I should be obliged if Mr. Freshfield, who has kept my diary ever since I was apprehended, will allow me to refer to it. [The diary was sent for, and on its production was handed to the prisoner, who proceeded with his address.] I will take leave, my Lords, to mention the manner in which my connexion with Fletcher commenced. He formed my acquaintance in 1839. I had then been in practise for only a year or two, and some papers connected with claims to the Angell estates were submitted to my consideration. I examined the title of my client, and was of opinion that there was no probable chance of her success. She, however, was not very well pleased with so unfavourable an opinion, and she sought out a person of capital to support her claims. She met with Fletcher, who called upon me. I had never seen him before, and he then made inquiries about the case. I told him my opinion was that the claimant had no chance whatever. He seemed surprised, and disappointed that he had not an opportunity for the profitable investment of his capital; but he thanked me for my candour, and left me.
30. Some two or three months afterwards he employed me on some other business, and from that period to the time of my apprehension, I was concerned for him as his regular attorney. That is well known to the conductors of this prosecution. They have had access to my diaries, and I know that wherever the case of Slack is mentioned, there Fletcher's name appears.
31. Fletcher had been a very good client, and I was concerned for him in several transactions relative to mortgages. When I first knew him he was a man of independent property and his appearance, manners, and deportment were such that I entertained no suspicion whatever as to the character of the transactions now under investigation.
32. [The diary was then handed up to the judges, and the prisoner proceeded to read from a copy numerous extracts relating to this business, observing that the entries were made by different clerks, as in the ordinary course of business. In all the entries the name of Fletcher occurred.]
33. Barber then proceeded - I may observe that the whole of this business was known to my partner, who took an active part in it. I have, I regret to say, to complain of his conduct; for ever since the commencement of this prosecution, he has kept away from me entirely, and has been in daily communication with the prosecutors. We have had no opportunity of taking his examination, or he would have been called as a witness on my behalf.
34. I think, my Lords, that this is a point of considerable importance:- Fletcher must have known, from the report of Christmas, whether Anne Slack of Abbots Langley was the owner

of the stock, and your Lordships must perceive that he acted throughout this business in such a way as to lead me to believe that Miss Slack was not the owner. On the 9th of January, 1843, I received the following letter from Fletcher:-

“Dear Sir, - I have received a letter from a friend in Bath, which induces me to go down to that place, respecting the existence of several persons of the name of Slack residing there, for which purpose it is my intention to go there on Tuesday next, unless you have made any appointment with the parties respecting the Westminster property or no before that day. As I shall not return, in all probability, for a day or two, I thought I had better inform you of it to prevent my disappointing the ladies interested in the conveyance.”

35. Fletcher then led me to believe that he went to Bath. I think your lordships will entertain no doubt that at that time he went to Bristol, to see the two prisoners, William and Lydia Sanders. Even caused an advertisement to be inserted in the Bath and Cheltenham Gazette, in these terms:-

“Anne Slack, spinster.- if Anne Slack, spinster, formerly of Chelsea, but who is now supposed to be living in or near the city of Bath, or, if dead, any of her legal representatives, or next of kin, will apply (if by letter, post paid) to Messrs. Barber and Bircham, solicitors, New Bridge-street, Blackfriars, London, they will hear of something to her or their advantage.”

36. I think your Lordships will see clearly that that advertisement was intended to deceive me.

37. Fletcher. - I deny it. It was put in by you, and with your approbation.

38. Barber proceeded- I am glad Mr. Fletcher has given that contradiction; for sometimes an attempt to do an injury really confers a benefit. I beg to remind your lordships that Fletcher, and all the other prisoners, have offered to the Government to make disclosures on the subject of these transactions. I have made no such offer; I have stood upon the merits of my own case. I received a letter from Fletcher, dated “Southampton place, Camberwell, January 23, 1843,” in which he says-

“Dear Sir,- I called at your office on Saturday morning to see you and understood that you were gone out of town. As I might again be disappointed, I have thought it right to address you on the subject of Miss Jane Slack’s letter. I do not think that we have a right to look upon the matter as at an end.”

39. Your lordship will see how extremely important this letter is to me. I do not wish to complain that my counsel did not call witnesses for the defence –

40. Mr. Wilkins.- Will your lordship allow me to explain that?

41. Mr. Baron Gurney. - we really cannot now.

42. Barber proceeded.- If my counsel had asked me whether he should call witnesses, I should have said it was unnecessary. Fletcher says, in the letter I was reading, “I do not think that

we have a right to look upon the matter as at an end.” If I had been engaged with him in the fraud imputed to me, he never could have used this expression. He proceeds-

“My friend has informed me that there are a great many of the name of Slack in the books, and I think without some clearer statement from her (Miss Slack) it may not after all be the same stock. I would suggest that you write to her on the subject, and endeavour to obtain an interview with her in London at your office, as it appears she is in possession of a will which at present remains not proved, and under the circumstances stated in her letter, she must come to London to some person to get the probate for her, as you well know the Bank will not give up any property they may hold belonging to any person unless the will is proved at the Prerogative-office. Therefore, under any circumstances, you might do some good by getting the business to do for her.

“I left the *Bath and Cheltenham Gazette* at your office, that you might see the nature of the advertisement which was inserted. I will call upon you on Thursday morning next, about 12 o'clock, when I hope to hear that you have heard something more favourable to us from the lady.”

43. Much stress has been laid upon the fact that I said, in a letter to Captain Foskett, “We find, by an entry at Somerset-house, that a lady of the name of Anne Slack died at Bath.” That statement I received from Fletcher; whether he will deny it I know not. He had then a correspondence with one Jane Slack. I will not enter into detail on this subject; but it appears that Mrs. Sanders had taken the lodging at Bath, and from that place she communicated with me under the name of Jane Slack. A lady of the name of Rivers, who was the landlady of the house at which Mrs. Sanders lived in Bath, could prove that she merely took the apartments for the sake of having letters addressed to her there, and of dating her letters to me from that place. I repeat what I have before stated, that she communicated with me in the name of Jane Slack and that was only a part of the system which was adopted to create confidence in my mind.
44. In March Mr. Fletcher came to me and stated, “I have found the party entitled to the property.”
45. I replied, “Have you indeed? It is very fortunate.”
46. He answered, “Yes, but she is fully acquainted with it, and I shall get no benefit by it.”
47. On the following day he introduced to me Mrs. Sanders as Emma Slack. Great stress was laid by the counsel for the prosecution upon the fact that when I accompanied Emma Slack, to receive the proceeds of the stock, I was seen to carry a bag of sovereigns. Was there anything extraordinary in that, when the person who had received the money was a lady, and one too who had the gout in her hand? I carried the gold most unquestionably out of the office, but I conducted her to a cab and there I returned it to her. I never received a shilling of that money, but the exception of the £15 paid me by Emma Slack for law expenses, of which some £7 10s. went to my partner, Mr. Bircham. On the 31st March, 1843, my partner, Mr. Bircham, wrote to Fletcher in the following terms:-



“Dear Sir,- I have just returned from the Bank, with the most satisfactory reply to Miss Slack’s application - namely, that in three or four days’ time the stock will be transferred into her name.

“If, therefore, she calls about the middle of next week say about Wednesday, she can receive the dividends and deal with the stock as she thinks proper.

“The answer was given me at the Will-office, without any questions being asked, and without an interview with the chief accountant or his deputy.

“On producing the certificate of the late Miss Slack's burial they informed me that she was sufficiently killed by the probate.

“We have written Miss Slack to the above effect.”

48. I think it will be admitted, my Lords, that if I had been aware of the dangerous nature of this business, I should have been very careful to watch it in all its stages, and that I should not have left the correspondence to be carried on by others.
49. Mr. Freshfield called on me about post time on the 15th of November. I produced to him all the documents I had relating to this transaction. I certainly did state to him, “For the present I think I ought to decline giving the name of the party under whose instructions I have acted.”
50. I declare solemnly that I did not say, as I have been represented to have done, that I would not give up the name, though I did decline to do so at the time. I said that the person who introduced the business to me was a highly respectable client.
51. Mr. Freshfield pressed me very much to say who that client was. I said I thought for the present I ought not to give his name; but that, if Mr. Freshfield would call in a few days, I would probably give him an answer.
52. I also informed Mr. Freshfield that I had reason to believe there might have been some mistake in the Bank books; for Fletcher had informed me that there were the names of two Misses Slack in those books, and both were marked “dead” - Miss Slack, of Abbot’s Langley, as well as Anne Slack, for whose pretended niece, Emma Slack, I was acting.- [The prisoner here read two extracts from his own diary, and from that of his partner, Mr. Bircham, to show about the 3d of April, 1843, Fletcher had stated that both the Misses Slack were marked “dead” at the Bank. An entry to this effect appeared in both the diaries.] - After Mr. Freshfield’s visit (the prisoner proceeded) I wrote to Fletcher, informing him that I had received a communication from the Bank, and requesting to see him. He called upon me, on the following Friday, and he said, “Don't trouble yourself about it. I know there is some confusion at the Bank; but my friend knows all about it, and he will set the matter right.”
53. I replied, “I remember you told me both the Misses Slack were marked 'dead';” and said, “Yes, but it will now be put right.”
54. On the 22d of November, 1843, Fletcher wrote me the following letter:-

“Dear Sir,- In consequence of having some of my houses without tenants, and also being obliged to do expensive repairs to them, I find my cash account to stand quite short. Under these circumstances I should be much obliged if you would have the goodness to pay me the amount of your note of hand, which I find becomes due on or about the 14th of December next (one year longer than the time for which it was drawn). I do not want the money until then, but I thought it prudent to apprise you in time.

“I have not heard anything more of the Bank business and I suppose that you have not.”

55. [The originals of all the letters read were handed to the judges, Barber reading from copies.]
56. The prisoner, William Sanders, has over and over again declared that he has a perfect knowledge of my innocence; and I feel it a great cruelty to me that the prosecutors have made no use of that statement. Sanders is the husband of the pretended Emma Slack, and therefore is fully aware of all the proceedings connected with these transactions. He knows that I was kept in the dark – that I was not aware of this system of fraud. I do not think he will deny that he has frequently declared he knows me to be innocent.
57. He made that declaration in January last; and the communication on the subject was made to Mr. Freshfield, of which he did not think fit to take any notice. I may remind your lordships that there is no sympathy or connexion between Sanders and myself; I had only seen him twice before the commencement of these proceedings.
58. I think your Lordships will perceive, from the circumstances I have mentioned and from the correspondence I have had the honour to submit to you, that Fletcher has most studiously deceived me in this business. I have laboured under every species of difficulty since my imprisonment. When I was apprehended I was taken direct to the Mansion-house; every paper I had about me was seized and examined. I was locked up, and then suddenly taken before the Lord Mayor, and was told, “You must either submit to be remanded for several days or go into the case.”
59. I replied, “I can't imagine that any case can be made out against me, and I desire to go into the case.”
60. If I had been a guilty participant in these frauds I should have shrunk from such an investigation without the aid of counsel.
61. I may be allowed, perhaps, to mention another circumstance from which I have suffered. In ordinary prosecutions, where the prisoner does not call evidence in his defence, his counsel has the last word; but in a Crown prosecution the prosecuting counsel has the right of reply. I feel quite satisfied that if the learned counsel for the prosecution had not exercised that right in this case, I should have been acquitted.
62. I may also call your Lordships attention to the two conflicting verdicts in this trial and that which preceded it. In the first case, which involved precisely the same principle as the present, I was acquitted without hesitation. In the present case the jury were in debate or consideration for something like an hour and a half.

63. I believe that many persons who entertain a conviction of my innocence still think that I have been negligent. If I have been so, I have already suffered deeply for such negligence. After seven years of great labour I had established an extensive practise. In the year previous to my apprehension our bills of costs amounted to between £3000 and £4000. Those costs did not arise from a few clients, and the sum we received from Fletcher formed a very inconsiderable portion of that amount. His bill did not exceed £100.
64. I occupied, I will venture to say, a position of perfect respectability; no reflection has been thrown upon my habits; my life was one of unwearied industry and labour. At the early age of 13 years I entered the office of Messrs. Scoones, of Tunbridge-wells; I served them about 11 years; at the end of that time they articted me, partly in return from my past services, and partly to secure those services for the ensuing five years.
65. Shortly before leaving Tunbridge-wells I conceived the object of establishing a literary institution there. I succeeded in accomplishing that object, and the institution exists to this day. I mention this circumstance merely to show in what manner I have occupied my leisure time. Since I have resided in London nearly all my leisure hours have been occupied in connexion with literary institutions.
66. The prosecutors have been most unwearied in their inquiries about me. They have endeavoured to ascertain if I was not a gambler. Heaven knows I am quite the reverse. I have never occupied my time in any such pursuits, and the prosecutors have not even attempted to prove it.
67. After Mr. Freshfield called upon me I continued to attend my office every day to the very day of my apprehension, and I was going there at a quarter past 9 o'clock on that morning.
68. I may remind your Lordships that not one farthing of the money, the proceeds of these frauds, has been traced to me. There has been no difficulty in tracing money to others; but it has not been shown that I received a single farthing, and I declare that I never had one farthing above the amount of my bill of costs.
69. Since my apprehension the furniture in my private residence, my books, everything I possess has been sold. Such has been the case also at my office; and, but for the kindness of my solicitor, Mr. Bramall, I might have been wholly undefended. I assure you I am utterly destitute.
70. Is it probable but I should have been in his condition if I had been a guilty participator in these fraudulent transactions? Your Lordships will contrast my position with that of Fletcher. He is a wealthy man. [Fletcher here made an observation to Barber.]
71. He says, "Don't say so."
72. He knows that his solicitor complained that £1000, his property, in the Bank of England, had been seized, and that another £1000, in another bank, had also been stopped. Was I not, then, justified in calling him a wealthy man? I mention this from no unkind feeling

towards Mr. Fletcher; but I think, in justice to me, your Lordships ought to contrast my position with his. It is hardly likely that I should have been a poor man had I been a guilty man.

73. I had not expected, my lords, that I should be called upon to address you this morning. I had hoped and expected that the prosecutors would have proceeded on one of the other cases, and I believe that had that been done my innocence would have been completely proved. Had I expected that an opportunity would have been afforded me of addressing your lordships this morning, I should have endeavoured to arrange my ideas in a more clear and methodical manner. But I think, my lords, that I have shown I have been the victim of deception. It is in consequence of the deception upon me by Fletcher that I am now standing before your lordships.
74. I assure you, my lords, most solemnly, that throughout this business I have acted merely as a solicitor. At the conclusion of the trial on Friday I solemnly declared what I now solemnly repeat, that I am perfectly innocent of the charge imputed to me, of a guilty knowledge of these transactions, and I conjure Mr. Fletcher, as he would have some peace in his declining years, to declare to your Lordships whether I have not been made the victim of a deception.
75. I am quite aware that your Lordships must act upon the verdict that was pronounced on Friday; but I sincerely hope that your lordships in passing sentence upon me will take into consideration the circumstances I have now, very incoherently, submitted to your consideration.
76. I declare that I am innocent of the crime imputed to me. As I expect to answer for the declaration in the future world, I solemnly declare that I have been deceived by this man, Fletcher, who had obtained my confidence.
77. The delivery of this address occupied upwards of an hour. The prisoner manifested extreme self-possession throughout, and spoke with great fluency, firmness, and clearness.

#### **[Fletcher]**

Fletcher then addressed their Lordships, but in a low tone of voice and with some hesitation. He said, I have very little to say my Lords, but I assure you that I have done nothing more than act upon the instructions unfortunately received from a man who ought to have known better,- the witness Christmas. If I had gone as far as he wished me to go, I should have been involved to a far greater extent than I am at present.

I declare solemnly that in no instance have I acted otherwise than upon instructions received from Christmas. He was acquainted most extensively with men about the Bank, through whom these transactions were effected. I could name them if it were likely to lead to a prosecution; and, if the statement I have heard be true, even during the progress of these proceedings, Christmas has still been making victims for prosecution - he has still been carrying on similar transactions.

I am very sorry for the position in which Mr. Barber is placed; but, if any deception has been practised by me, as he alleges it has previously been practised upon me.

Christmas declared to me most solemnly that the stock standing in the name of Anne Slack, of Abbot's Langley, and that in the name of Anne Slack, of Chelsea, belonged to different persons.

Had the parties concerned in these transactions being brought to account, I solemnly assert, that my conduct would have been viewed in a very different light. I may state that I have been suffering for some time from a disease of the heart, and I implore your lordships to take that into consideration in determining my sentence.

**[Sanders]**

Wm. Sanders said that he had endeavoured to make all the amends in his power for his conduct in this transaction, and he had only to implore the mercy of the court for his wife and himself.

Mrs. Dorey (who appeared extremely ill and faint) and Mrs. Sanders declined to make any statement.

**[SENTENCING]**

## Appendix 18 Mansion House hearing 2 May 1844

POLICE <sup>49</sup>

MANSSION-HOUSE. – Mr. Cope, the governor of Her Majesty's gaol of Newgate, waited upon the LORD MAYOR in consequence of his Lordship's desire to communicate with him on the subject of a report which had become very prevalent, to the effect that all the prisoners who had been tried with Barber, repeatedly declared that that delinquent was innocent of the knowledge that, in the proceedings adopted for getting the sums of money sworn to as bequeathed to the different legatees out of the hands of the Commissioners for the Reduction of the National Debt, there had been any unfair play whatever resorted to.

Alderman Humphery was sitting with the Lord Mayor when Mr. Cope attended.

The LORD MAYOR said, it appeared from what had been represented in some publications that there were several ridiculous statements afloat relative to the charges upon which Barber had been convicted, reflecting upon the magistrate who presided at the examinations, as well as upon those who conducted the prosecutions against the persons accused of the offences in which that individual had participated. It had been said that he (the Lord Mayor) had performed the characters of judge and jury on the occasions he alluded to, and the most positive assertions had been made that Mr. Barber was declared by those with whom he was said to have conspired to be wholly innocent of the knowledge or even of the suspicion that the wills in which he had been professionally engaged by Fletcher and others were not *bona fide* instruments. There were, it would seem, many who were influenced by the assurances of Barber that he merely acted in his professional capacity, and by the apparently candid appeals which he made to the public by referring to the whole tenor of his previous conduct to suppose that he was a martyr. That impression might have been easily communicated to those who did not take the trouble to read the evidence; but nothing could be more fallacious in the minds of all who had observed the proceedings, and he would not have taken the slightest notice of the matter if it were not that people who were endeavouring to excite a sympathy in favour of Barber continued to assert that those who were charged as his accomplices most peremptorily declared him to be an innocent man. His Lordship wished to know from Mr Cope whether he had heard anything relating to the subject before the prisoners had been removed from Newgate.

Alderman HUMPHERY. - I think it necessary to inform your Lordship I was in the gaol of Newgate yesterday, and having heard abroad that such reports as you have alluded to were in circulation, I made very particular inquiries upon the subject on the spot. I then learned that the principal persons concerned with Barber had told very different story to Mr. Cope and the chaplain of the prison.

Mr. Cope said, after the conviction of the prisoners, Barber expressed great dissatisfaction at the verdict, and expressed an anxious desire to see and communicate with the sheriffs. I asked him for what purpose, being willing to do anything consistently with my duty. He replied "I am desirous that the Sheriffs should be present while I read a declaration which I have drawn up, and which I want Fletcher, Sanders, Mrs. Sanders, and Mrs. Dorey to sign. It is to the effect that they all declare my innocence as regards those transactions, and that they believe that I acted in them merely as a professional man." I said that I did not believe the Sheriffs would consent to be present under such circumstances, and that it would was also my opinion that the magistrates would object to

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<sup>49</sup> *The Times* (1844) 'Police - Mansion-House' 3 May.

such a proposition; and I suggested to him the propriety of ascertaining whether the other prisoners would be willing to sign such a declaration. Mr. Barber agreed to this suggestion, and Mr. Davis, the ordinary, and I, accordingly asked each of the parties the necessary question. Mrs. Dorey, when I asked her whether she was willing to sign a declaration that she believed Mr. Barber to have no guilty knowledge of the transactions of which he was convicted, replied, "certainly not; for Mr. Barber knew all about it. I cannot sign anything of the kind." I put the same question to Fletcher, and he also declined to sign any declaration of the kind, as Barber was well acquainted with everything about the transaction. To the chaplain who, [sic] communicated with them, they spoke in similar terms, assuring him that they could not make any such declaration, as Mr. Barber knew everything about the matter. When I went to Sanders and his wife and asked him whether they would have any objection to sign an instrument of the kind, they replied that they had not. Mrs. Sanders stated that she had been only concerned in one case, and that she had only seen Mr. Barber once, and that in his professional capacity for a minute in this business, and, of course, she could have no objection.

Alderman HUMPHERY. – Had the prisoners any opportunity of communicating with each other?

Mr. Cope. - Not the least opportunity of communicating with each other in the prison. They might have spoken together in the dock of the court. There was no possibility of preventing that.

Alderman HUMPHERY. – Mr. Cope has exactly stated what I heard yesterday. I will answer for the correctness of his report.

The LORD MAYOR. - It is, in my opinion, necessary to remove wholly the impression that Barber, who was shrewd and clever enough to take in all the rest, was himself the dupe of any of them. I should not, however, consider myself bound to take notice of the fallacious reports if I had not heard that they were most pertinaciously made and had obtained credence to a certain extent; for it has been added that injustice has been done to Barber by the alleged refusal to allow the declaration of his innocence to be made by his fellow prisoners.

Alderman HUMPHERY said, that what had been first stated would most satisfactorily set the matter at rest. He had felt very great astonishment at the prevalence of the report that Barber was innocent; but he confessed that that astonishment was much increased upon hearing a brother alderman positively declare that he was convinced of the innocence of Barber.

The LORD MAYOR. – Upon what did he found that belief?

Alderman HUMPHERY. – I believe upon the mere statements which Barber made to him in prison.

The LORD MAYOR. – It is not to be wondered at then that a report of such a nature should find people ready to support it when a city magistrate actively gives it currency.

[ends]

## Appendix 19 Petition of May 1844

### Transcript of William Henry Barber's Petition of 21 May 1844

[NB Barber rarely uses apostrophes or commas. He prefers 'favor', 'honor' etc as spellings as well as 'hand writing' and 'any thing'. He often runs separate, or what appear to be separate, sentences together.]

[HO9]

To the Right Honourable Sir James R G Graham Her Majestys Secretary of State for the Home Department.

The humble Petition of William Henry Barber now a Prisoner in Millbank prison under a sentence of transportation for life

Sir James,

I am the unfortunate solicitor who was convicted of uttering the forged will of Anne Slack, at the last April sessions of the Central Criminal Court, knowing the same to be forged. Of that guilty knowledge I solemnly declare I am entirely innocent and I humbly crave Sir your attention to the following facts which I have as clearly arranged as my broken spirits and enfeebled health will enable me.

Fletcher introduced himself to me in the year 1839 and employed me as his solicitor which I continued to be till my apprehension. He told me he had a friend at the Bank who gave him confidentially every information as to dividends unclaimed and he therefore employed himself in tracing out the owners, which being done he got the best bonus he could for his trouble and information. He was living as an independent man when I first knew him and had every appearance of great respectability. In several instances he employed me to negotiate [HO10] terms with the owners of the Stock and Dividends he had traced and to prepare agreements in which the name of a third party was inserted for Fletcher. Two cases of this nature were those of George Robins formerly of Regent Street and David Smith of Limehouse. I negotiated terms with the respective solicitors of the parties entitled who received the amount of the property and in the case of Smith the information was a great blessing as nearly all of the parties interested were in extreme poverty. The bonus which was readily paid I handed to Fletcher and he paid my bill out of it. In the autumn of 1842 he communicated to me that there was a sum of £4000 and upwards due to Anne Slack of Smith St Chelsea. He said he had found the entry of one Anne Slack who had died at Bath but he had also ascertained that there was a lady of the name residing at Abbots [sic] Langley with Captain Foskett who married her sister. He desired me therefore to put myself in communication with the Captain to ascertain 1<sup>st</sup> whether she was the party entitled, and 2<sup>ndly</sup> if she were [HO11] so whether she had a knowledge of it. Hence the correspondence and interviews between me and Captain Foskett all of which were from time to time reported to Fletcher as appears by my Diaries and in the Letter Books of the office.

The most important question seems to be what justified me in considering that this lady was not entitled. The grounds on which I formed that opinion were two but as to both of which I relied upon Fletcher. First the hand writing did not agree with the signature in the Bank Books - secondly the owner of the stock had executed a power of attorney 12 years before. Miss Slack was stated by Captain Foskett to be but 27 years of age or thereabouts. A minor could not execute a power of attorney therefore the owner must be another and a much older person. As to the first point the



hand writing I can only prove Fletcher's report to me that the hand writing did not agree by the Entry in my diary and the following memorandum which he gave me as an Extract from his Bank friend's letter, as well as all my subsequent communications with him.

'I beg to observe that there is other stock in the name of Anne Slack formerly of Smith St Chelsea but now of Abbots Langley Herts. [HO12] but she is not the same person, they are distant relatives only.' [SIDENOTE: This document as well as the Letters and Books referred to are at my Solr's Mr. Bramalls 5 Verulam Builds. Grays Inn.]

This extract or pretended extract is in Fletcher's hand writing.

I noticed to him the expression 'distant relations' and suggested that I would intimate that to Capn. Foskett but to this he objected, observing he should endeavour to trace out the party and make the first communication to secure his bonus. The second point as to the age appears by Captain Foskett's own evidence[,] [altho'] therefore I had hoped and believed from the fact of Miss Slack having once resided in Smith St. Chelsea that she was the party entitled yet the two circumstances as to the writing and the age quite convinced me that altho' it was remarkable that two Anne Slacks should have resided in Smith St Chelsea yet that such must certainly have been the fact. [SIDENOTE: All my communications with Capt. Foskett were regularly reported to Fletcher as to a client by whom we were employed as appears in our Books.] The following are copies of my letter to Fletcher with the hand writing of Miss Slack and his answer

'Bridge St 23 Dec. 1842

Dear Sir

Yourself and Bannister

We are only waiting for an appointment with Mr. Hughes to settle this purchase and which we hope to get arranged in a few days.

Re Slack

I enclose a letter from Miss Slack for the purpose of enabling you to get the handwriting compared.

Re Leman

I have made some progress in this investigation but it will be some time for anything decisive can be said.

[HO13]

Smiths Estate re Fell

These draughts are gone to Mr. Sewell who is concerned for some of the family for his perusal.

Yours faithfully

WH Barber

[To] Fletcher Esquire

[SIDENOTE: All the letters to Fletcher are printed off into the Letter Books of our firm.]

I quote the letter entire to show that we were concerned for him in various matters and that Slacks was only one of them.

The following is his answer.  
Southampton Place Camberwell  
December 29th 1842

Dear Sir

I received your letter which I intended to have answered before but have been prevented in consequence of having been extremely ill with a bad cold. I should be most happy to allow your note of hand to stand over for the time you mention but having all my spare cash now fully employed for some time to come I am under the necessity of requesting the favor of you to allow me to receive the cash on or before the 14th of January 1843 being one month after the note being due.

I think I explained to you the property in Westminster was very much out of repair the expense of which of it to me will require more money than I can at present call in. Miss Slack's letter has been handed to my friend and I shall hear from him in the course of a day or two when I will let you know the result.

I am Dear Sir

Yours truly

J. Fletcher

I hope you are getting on with the Leman [Business].

[HO14]

The former part of this letter refers to the postscript to mine, which being private was not taken off by the clerk, in which I asked him the favor to allow a note of hand which I had given for an advance of money to stand over for some time. He occasionally lent clients money and occasionally I borrowed of him myself and for which I paid him ten or 20 per cent according to circumstances. [sic] on the 4th January he called and returned the letter of Miss Slack stating that the hand writing did not agree - that there was no resemblance - in verification of this statement he left the extract from his friends letter previously set out.

The following entry appears in my diary.

‘1843

Jan. 4. Re slack. Mr. Fletcher.

Hand writing not the same. Letter to Mr. Baxter returning Miss Slack's letter. Long conference re future measures and advising re advertisement.’

On the 9th I received from him the following

Dear Sir, I received a letter from a friend in Bath which induces me to go down to that place expecting the existence of several persons of the name of Slack residing there for which purpose it is my intention to go there on Tuesday next unless you have made any appointment with the parties respecting [HO15] the Westminster property on or before that day, as I shall not return in all probability for a day or two I thought I had better inform you of it to prevent my disappointing the Ladies interested in the conveyance. If

you have made any appointment probably you will have the kindness to drop me a line this day.

I am, dear Sir  
Your obdt. Servt.  
J. Fletcher

It will be noticed he speaks of going to Bath although but little doubt can now exist that in fact he went to Bristol to arrange his plot with Mr. and Mrs. Sanders who resided it appears there.

On the 10th he called as is shown by the following entry in my diary 'Re Slack. Took Mr. Fletcher's report from Bath' he said he had found several persons of the name of Slack but was not certain if he had found the right owner and that he had inserted an advertisement in a Bath Paper referring parties to Barber & Bircham.

The paper is at Mr. Bramall's office and the advt. is for the representative of Anne Slack formerly of Chelsea spinster.

On 20th the following answer was addressed to our firm - altho' 'commencing Sir.'

Bath January 19<sup>th</sup>

Sir

In the Bath and Cheltenham Gazette appeared an advertisement in which [HO16] a person of the name of Slack was wanted to claim some property. My aunt's name was Anne Slack formerly of Chelsea as you describe as a maiden lady but she has been dead about six months she left some property in the Bank of England to me by will which in consequences of long illness I have not been able to attend to but I know no other property belonging to her if you have any knowledge of anything more I should be most happy too we need right you for the information.

Addressed No.7  
Westgate Buildings  
Bath

I am Sir  
Your obedt. Servt.  
Jane Slack

This was sent to Fletcher and we observed in the letter that there could be little doubt that this was the party and who being aware of the property we must consider the matter at an end.

On the 24th we received the following in reply.

Southampton Place  
Camberwell  
Jany 23rd 1843

Dear Sir

I called at your office on Saturday morning to see you but I understood that you were gone out [HO17] of town. As I might again be disappointed I have thought it right to address you on the subject of Miss Jane Slack's letter. I do not think that we ought to look upon the matter as at an end. My friend has informed me there are a great many of the name of Slack in the Books and I think without some clear statement from her, Miss Slack, it may not after all be the same Slack. I would suggest that you write to her on the subject and

endeavour to obtain an interview with her in London at your office as it appears she is in possession of a Will which at present remains not proved and under the circumstances stated in her letter she must come to London to some person to get the probate for her as you well know the Bank will not give up any property they may hold belonging to any person unless the will is proved at the Prerogative Office therefore under any circumstances you might do some good by getting the Business to do for her. I left the Bath and Cheltenham Gazette at your office that you might see the nature of the advertisement which was inserted. I will call upon you on Thursday morning next about twelve o'clock when I hope to hear you have heard something more favorable [HO18] to us from the lady. I have not heard from you respecting the Westminster property I should be glad to know why you cannot get that business settled. I have not heard from you anything more respecting the trust deeds in the matter of Fell.

I am Sir  
Your obedt. Servt.  
J. Fletcher

N.B. I have enclosed to you Miss Slack's letter that you may know her address.  
J. Fletcher.

We then wrote the following letter to Miss Slack of Bath.  
28 New Bridge Street, Blackfriars  
24<sup>th</sup> Jany. 1843  
Madam,

We beg to acknowledge the favor of your letter of the 19th instant but we have some reason to doubt whether the property with which you are acquainted is the same as that adverted to by us and as you must necessarily be in town for the purpose of proving the will we should feel obliged if you would previously favour us with a call on the subject.

Miss Jane Slack  
7 Westgate Builds.  
Bath

We have the honour to be  
Madam  
Your obedient servants  
Barber & Bircham

[HO19]

On the same day we wrote to Fletcher as follows.

'Dear Sir

We have written Miss Slack as you suggested and hope that some advantage may yet be derived from the matter although it certainly presents a discouraging aspect. The delay in settling your purchase of the Westminster property rests with the vendors to whom we have given notice that you will claim to be allowed interest upon your money which has been lying idle. We learned from Mr. Hughes that he has obtained the signature to the conveyance of all the parties except one so that we trust little time more will elapse prior to the completion.

The draft Trust Deed has not yet been approved of by all the parties interested but we are urging it with all practicable dispatch.

We remain Dear Sir

Yours truly  
Barber & Bircham

On the 25<sup>th</sup> we received the following from Miss Slack.  
Bath January 25<sup>th</sup>

Gentlemen,

In answer to yours I beg to say I propose being in London in a few days for the purpose of proving the will when I will wait on you before I take any proceedings.

To Messrs. Barber & Bircham  
Blackfriars, London

I am your obdt. Srvt.  
Jane Slack

[HO20]

On the 28<sup>th</sup> we received the following.

Gentlemen, Bath, February 26<sup>th</sup>, 1843

I am instructed by Miss Slack to inform you on presenting the advertisement which appeared in the Bath & Cheltenham Gazette to her Solr. it was discovered it could not apply to her as her aunt never having resided at Chelsea altho' many years since she resided at Chertsey for a short period and as it did not appear to be the person wanted she has therefore proceeded and [has been since] completed to her satisfaction she has requested me to thank you for the trouble you have taken and should she at any future time discover any person of the name she will refer them to you.

I beg to remain  
Gentlemen  
Your obedt. Servt.  
Jos. James

We sent this letter to Fletcher observing that it was an extraordinary sort of communication but that at all [accounts] it might [never] be ascertained whether this party was the owner of the Stock. [SIDENOTE: A copy of this letter is in our Letter Books.]

On the 4<sup>th</sup> of March he called and reported, as appears by my diary -

're Slack. The lady at Bath has no claim to the £4000 not being the same.'

[HO21]

From close inspection and consideration of [these] letters of Miss Jane Slack and Jos. James since my apprehension it was suspected that they were not genuine and my solicitor Mr. Bramall kindly at his own expense went to Bath to examine into the point and he then found that a lady had taken apartments at 7 Westgate St that she never slept there but came to and fro to receive and write letters. The landlady whose name was Rivers remembered the letters from our firm coming there. She was brought to Town to attend the Trial and at once recognised Jane Slack in Mrs. Sanders. The precise object of this false address and these fictitious letters may be doubtful. But as Sanders has declared that a fictitious entry of a death at Bath was made and from an error abandoned it was probably at first intended by Fletcher to produce his claimant as Miss Jane Slack of Bath. That

he was at the bottom of the whole is now beyond doubt, considering his [purported] journey to Bath in January and his intimate connection with the Sanders's. And that all this was planned to mislead me cannot I confidently submit be fairly doubted. Mr. Bramall also ascertained that no such person as Jos. James could be found at Bath. Upon a close inspection [HO22] of the letter signed Jos. James there is some reason to suspect it is Fletcher's writing but it is [extremely] disguised and certainly might be read without detectn. [detection]. [SIDENOTE: It appears also by Mrs. Dorey's confession published since the Trial that she was a party to taking these lodgings. Had this confession not been kept back until after the Trial it would have served me materially.]

All clue to the owner of the Stock being as it appeared lost I suggested the expediency of an advertisement in The Times. He assented to this and on the 8<sup>th</sup> March an advt. for the representative of Anne Slack late of Smith St Chelsea was inserted and parties were referred to Barber and Bircham. Several parties answered the advertisement some I saw others saw the Clerks but most of them saw Bircham who took notes of the grounds of their application but none of them appeared to have any connection with the owner of the unclaimed Stock. On the 15th Fletcher said he had found the party who was clearly entitled but that he should get but little if any thing by it as it was a niece of the deceased and she had the Will in which the property was specifically bequeathed to her and she did not therefore require his information, but said he I can probably get you to be her solr. He explained how he had met with her very plausibly. And the following day he introduced her as Emma Slack when she produced the will. I asked her [HO23] several questions about the Will and about her aunt which she answered without any appearance of embarrassment. She was very respectable in appearance and appeared to have recovered from recent illness but still suffering from Gout in her hands and feet. Fletcher lent her eighty pounds to pay the probate duty. (This he swore at the Mansion House and his doing this in my presence as if to have a witness of the loan to a stranger was another piece of artifice to deceive me). Another step to establish my confidence was the production of the certificate of the Lady's Death at Pimlico. This too Fletcher swore was brought by Miss Slack when he introduced her to me. He knew well it would not be required at Doctors Commons or the Bank and therefore the whole scheme of getting the fictitious death registered was to gain my confidence.

The conduct of the matter was by no means [...] by me on the contrary I went to the Kingston Assizes and was there during the greater part of the time when the Business was in progress. It was then attended to by Bircham and the Clerks who saw Fletcher on the subject several times and wrote letters to him and Miss Emma Slack. Upon one occasion Fletcher instructed an Articled Clerk Macnamara to enquire at the Bank as to what progress [sic] was making. He then gave him the following [HO24] directions which McNamara committed to writing

'Miss Anne Slack of Abbots Langley Hertfordshire is not the same person as Anne Slack late of Smith St Chelsea whose Will has lately been registered and that Miss Slack of Abbots Langley is still living.'

This it will be seen is in effect the same as the pretended Extract from his friends letter. Bircham presented the application at the Bank and reported to Fletcher the final result. In the course of the Business Fletcher called and represented both to Bircham and myself as shown by our Diaries that the Bank had made a blunder in entering both the Miss Slacks 'deceased' I.E. Miss Slack of Abbots Langley and the Testatrix of Pimlico. A note of this communication appears in my diary and Bircham's also. The importance of this will be seen as proving how studiously Fletcher kept up the deception. The Business was settled on the 7th of April. I attended at the Bank when the Stock

was sold and the Dividends received by Miss Slack. She desired to have £600 in gold which she accordingly received.

I carried it for her to the cab and accompanied her to the office. Fletcher attended there to receive his £80 which he had lent her. A mock settlement took place between them to preserve [HO25] appearances with me – she paying him the £80 and £5 for the loan of it – this he proved at the Mansion House when under examination as well as the fact of his having introduced her as Miss Emma Slack. The only profit I got by the transaction was the moiety of £15, our Law Bill. She signed the Account in our Ledger acknowledging the receipt of all the money produced from Stock and Dividends. (This receipt of hers I submit is a fair answer to the presumption of my having had the 600 sovn. [merely] because I carried them for her as we left the drawing office). [SIDENOTE: I should be glad if she and her Husband were asked to declare whether this Bag of Sovns. was not delivd. to her.] Fletcher then offered to conduct her to a cab and they went out of the office together. With reference to the alleged conversation at the Bank as to changing one of the 1000 pound notes for gold I have no recollection of it but if talked about it was certainly not done. It in no manner concerned me.

I never saw the pretended Emma Slack again until after her apprehension.

When Mr. Freshfield called upon me in November I readily produced to him all my books and papers and gave him every information I possessed connected with the Business except the name of the party who introduced the Business to me telling him that I thought I ought not to communicate that information for the present but if he would [HO26] call again in a few days I might feel justified in doing it. Mr. Freshfield appears to have understood me to say that 'I could not recollect' but he on this point is certainly mistaken. I told him I thought there must be some mistake. I believed most firmly that the enquiry of Mr. Freshfield was founded in the error which Fletcher had previously said had been committed in the Books by making the two Anne Slacks dead and I considered I ought not to expose him to any annoyance without first calling upon him for an explanation.

I sent for him accordingly when he reminded me of what he had previously stated with regard to the two Slacks adding 'I know all that's passing at the Bank. They will set themselves right and you will hear no more of it.' I said at all events I will write to Mr. Freshfield to ascertain distinctly whether a mistake has really been made. He said you had better not do that as you will again be pressed for my name and which I don't wish known at the Bank and perhaps after all the object is to trace out the party who gave me the information. He called a day or two afterwards and represented he had received a letter from his friend stating that the error had been corrected. I believed him and the more so that I [HO28]<sup>50</sup> heard no more from Mr. Freshfield. That Fletcher should not have absconded after my communication he well knowing what must follow seems extraordinary as no eyes were upon him and he had ample resources.

The probability however is that he cunningly but erroneously imagined himself free from attack as he had taken no open part in the business either at Doctors Commons or at the Bank and he perhaps thought that if he could lull me into a false security until I was apprehended my mouth would be stopped and he would be safe. There is a letter of his with my papers in which he says 'I have heard no more of that Bank Business and suppose you have not.' This was about 10 days prior to my apprehension.

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<sup>50</sup> HO27 is out of order in the file.

I continued my attendance at the office daily (little dreaming of the precipice on which I stood) until I was apprehended 3 weeks after. I then immediately conferred with my partner and it was determined he should fetch Fletcher to explain the matter. He went to his house and brought him accordingly. I saw him in the presence of my partner only and I then said Mr. Fletcher I must call you to explain the Business. He demurred a little upon the ground that he might be pressed to state who gave him his information at the Bank. I told him he was not bound to state that which was a confidential communication but I begged him to explain the real facts as to the Will and Miss Slack. He objected a good deal to [HO29] being called but I insisted upon it as his duty to me, and my partner reminded him of the situation in which he had placed me. At length he consented to give his evidence upon my saying I would point out that he was not compelled to disclose the name of his friend at the Bank should he be pressed. He then proved that he had introduced Emma Slack to me and gave a long statement as to how he had discovered her as being the representative of Anne Slack late of Smith St Chelsea and that I had no knowledge of her until he introduced her. His contradictory answers to the questions on cross examination astonished me exceedingly and for the first time excited in me some suspicion of his guilt. Still I could hardly believe this and it was not until after about 3 days, when the result of the enquiries I caused to be made at 7 Francis St[,] Pimlico and the Commercial Road East disclosed the painful reality that the whole was a vile fraud and fabrication, that I could believe him a guilty man. From that moment I severed myself and my defence entirely from him holding no communication whatever directly or indirectly with his solr. or any person connected with him. Altho' he has had the command of thousands and I have been struggling to get up my painful defence in prison and in poverty not a shilling have I had from him. Before the Court [HO30] I solemnly challenged him with having deceived and misled me and demanded of him to declare whether I was guilty or innocent. In reply he only said he was sorry for the situation in which I was placed but that tho' I was misled he himself had been by Christmas his friend at the Bank who gave him his information. Christmas had the hand writing of Miss Slack from Fletcher to compare with the writing in the Bank Books. He says he reported to Fletcher that it did agree with a slight variation and that she therefore was<sup>51</sup> the owner of the £3500 stock. Fletcher as shown by his written statement reported to me she was not the person. Here was the great deception practised upon me. If Christmas found that she was the owner how was it he stood by and saw about two months afterwards this pretended Emma Slack come forward as the representative of an old lady at Pimlico and recover this very property? He says that when Fletcher told him he had 'found the owner' he told him to be particular about the identity. Why this is quite incompatible with his knowledge acquired by comparing the handwriting that Miss Slack of Abbotts Langley was the true owner. I notice this because I submit humbly but confidently that not one of the circumstances urged against me [HO31] is so strong as this against Christmas who is not charged with guilt although he admits the receipt of £100 from Fletcher on account of this Business.

In the conduct of my defence I had to struggle in the face of all the difficulties of imprisonment destitution and illness. I lost the service of the Counsel and Solr. first employed from my Poverty. The solicitor Mr. Bramall who subsequently conducted my defence was ill during my trial and the loss of his attention was severely felt. Had he been present he would have urged upon Mr. Wilkins the importance of calling my witnesses and of adducing the documentary evidence such was the course always intended to be pursued. Mr. Wilkins however doubtless considered that no facts had been proved against me from which any inferences could be drawn but those which he had fairly met by reasoning and I must say such was my own impression at the conclusion of his address.

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<sup>51</sup> This underlining seems to be in a different ink and may have been added by a later reader.



The refusal to allow me to be tried separately prejudiced me greatly. Had the others been first tried I should as was sworn by affidavit have called upon each of them to declare every particular to show my part in the Business and this without having communicated with [HO32] either of them. I had indeed heard the fact that Sanders had repeatedly declared my innocence. This he did in January last to his Solr. who communicated the fact to Mr. Freshfield. He repeated this after his apprehension both at the Compter and at Newgate. When it is remembered that he is the Husband of the pretended Emma Slack and that he must therefore have been privy to every step taken by her and indeed must have planned the whole with Fletcher such a declaration made without any interested motive or communication with me is I humbly submit strong moral evidence of my innocence. Had Sanders been tried separately from me he would have proved such a system of deception practised by Fletcher and himself to mislead me as connected with Fletcher's evidence in his letters must have established my innocence. Fletcher I learn has expressed himself vindictively towards me because I brought him forward. Had I believed him a guilty man it would have been equally my interest and my duty to have given him up before I was apprehended such a step would have [ensured] my own protection. To have produced him as I did with such a belief would of course have been the height of folly.

[HO33]

The three other cases introduced to me by Fletcher and which proved to be frauds were those of Stewart Burchard Hunt. In Stewart I was acquitted without hesitation but in addition to the evidence given is a letter written to me by Fletcher in the hands of Mr. Bramall from which it will be clearly seen that he introduced the pretended Mrs. Stewart to me as a regular and honest client. In Hunts case Sanders personated the claimant and his statement is therefore I submit of some consequence. Besides which both in this and Burchard I should be able [to] shew my perfect innocence. [SIDENOTE: Mrs. Dorey declares that the proceeds in Burchards Case were divided between herself & Fletcher. This now appears in her confession.] My Counsel pressed to have these two tried because circumstances would have transpired by calling those not indicted in those Indictments and otherwise which would have thrown a powerful light on my innocence.

At the Trial my Counsel severely animadverted upon the [mode]<sup>52</sup> in which Mr. Freshfield gave his evidence. For this I am in no manner responsible. I must however say that the prosecution have shown an eagerness to convict me which must have arisen from misrepresentation of my real character. Persons whom I have offended in the discharge of my professional duty have put themselves in communication with Mr. Freshfield and prejudiced his mind against me. My habits I [HO34] will boldly say have been those of unwearied integrity honesty and frugality. It was proved at my Trial that I served a clerkship with a highly respectable gentlemen of 16 years duration and that my character for honor and integrity was unquestionable.

About 30 witnesses attended to speak for my character since I have been in practice consisting of special pleaders, solicitors, surgeons and other professional men, clients and others of great respectability who gave testimony to my high character for honor and integrity. My leisure has been devoted to literary and scientific Institutions of which I have long been a very humble but zealous supporter. I established the Institution at Tonbridge in Kent. I had the honour to cooperate with Lord Brougham and the late lamented Dr. Birkbeck in forming the Adult Instruction Society. For the last six years I have been an active member of the committee of the

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<sup>52</sup> That is – by referring to his note of the meeting of 15 November 1843.

Southwark Literary Institution. The Treasurer and Trustee of the society and several of my colleagues [bore] the most honorable testimony to my character.

It has been said that a Solicitor ought to have suspected the fraud but it is well known to the prosecution that Fletcher entrapped another Solr. Mr. Phillips precisely as he entrapped me. The [HO35] circumstances in that were far more calculated to create suspicion. I advert to the case of Mary Hunt in which I understand about £4000 was paid over into Fletcher's own hands by Mr. Phillips but still that gentleman had no suspicion of fraud. The crafty scheme practised upon me by Fletcher would have deceived the most guarded solicitor.

I beg leave, Sir, to invite your attention to the cases of the other prisoners. Fletcher and Mrs. Dorey were concerned in procuring unclaimed dividends prior to the formers ill fated introduction of himself to me. They clearly planned all these four frauds and shared the ill gotten treasure. This has been abundantly manifest throughout the proceedings. Fletcher like a cunning villain kept himself as far as possible from performing any act which might fix him. Mrs. Dorey in Stewarts case procured her own mother to commit [forgery] and robbery for her own benefit. In Burchards case she committed both these crimes herself. She then got her sisters husband Sanders to do so, and finally in Slacks case gets her own sister to perform the same parts. It was also proved by her former Solicitor, at the Mansion House, that the two Wills of Hunt & Burchard were forged by her own hand. That she [HO36] is guilty of all this is clearly proved.

She for their career of wickedness is sentenced to two years imprisonment with her sister for a companion. Meantime her husband is carrying on the Business with the very fruits of her accumulated crimes which she will come out to enjoy at the expiration of her term - but it is said she made a confession as some atonement but this confession was only made after her guilt had been proved to demonstration and to save herself by involving if possible other parties.

Mrs. Sanders was probably under the influence of her husband her sister & Fletcher but her guilt was beyond all doubt and she carried out the fraud with a cunning and address which proved her the most acute woman. She is imprisoned for two years.

Sanders who personated Hunt and must have been in concert with his wife and Fletcher in Slacks case and who he must have derived thousands from these transactions, whose guilt has been confessed and proved - he is transported for seven years.

That the extreme punishment should be inflicted upon the crafty selfish and heartless Fletcher was a measure which though dreadful in its character every mind was [HO37] prepared for. He has amassed his thousands and disposed of them at his pleasure. These thousands despite his cunning were tracked to his coffers. His accumulated guilt is demonstrated beyond a shadow of doubt. Not a shilling have I gained beyond my Law Bill. So poor was I that I could not command the means necessary for my proper defence. My guilt is at most but conjectural. Yet my sentence and Fletchers are the same.

I was acquitted without hesitation in Stewarts Trial and Fletcher was convicted. In Slacks case it was not without an hour and a half hesitation that a verdict was obtained against me. The judge unfortunately took a view of my case which I cannot but feel was not justified by the entire evidence and submitted to the jury the arguments of the prosecutors counsel and almost totally omitted those of mine. His Lordship omitted also to remind the jury that if they entertained a just and reasonable doubt I was entitled by the Law and Constitution of the Land to the benefit of it. Such a direction was the more important in a case where the [HO40 ([HO38-39 out of order])] evidence was purely circumstantial and inferential. I attribute this calamitous verdict to the peculiar

and unilateral summing up of his Lordship, the omission of my Counsel to call witnesses and the absence of my Solicitor from illness - who was also an important witness, the unfair right of reply exercised by Mr. Erle, the denial of a separate trial, and the want of pecuniary means to submit my defence properly to a jury opposed as I was to the unlimited resources of the prosecution. In lamenting that my Counsel did not submit any evidence to the jury I must at the same time acknowledge my obligations to them for the great time and labour they bestowed, whilst their fees were merely nominal, but unfortunately from my being a Prisoner I was deprived of the great advantage of consultation before trial which would have been of the greater service from the illness of my solicitor [sic]. Mr. Wilkins who made the most energetick<sup>53</sup> speech was considerably exhausted and scarcely equal to going through the evidence for my defence which I do believe he sincerely felt to be unnecessary. I have made no confession having nothing to confess. Were [HO41] I guilty a confession would [ ...] my mind and possibly constitute some recommendation to a prayer for commutation but I have done more.

Ever since my apprehension I have provided every information to the prosn.[prosecution] and have given much that was likely to assist. I advertd. [advertised] for Emma Slack offering a reward of £200 and correctly describing her person as she presented herself to me referring parties to Mr. Freshfield, all the answers my Solr. received he handed to Mr. Freshfield. All I knew has been unreservedly communicated to the prosn. without any stipulation or terms whatever. If there is any information I can now give I am ready and anxious to give it. - I have now suffered an imprisonment of nearly six months, I have been stripped by executions and distresses of every vestige of property and am now a destitute and broken hearted man.

I have reason to believe that both Mr. and Mrs. Sanders will speak the truth if you will permit their statements to be properly and fully taken down, and although in a legal sense no value could be attached to statements from persons in their situations, yet as their [HO42] account cannot now be swayed by any interested motive and as their statement, if truly and fully made could be confirmed by Documentary Evidence and by circumstances which it must be in their power to narrate their statements would not I trust be wholly disregarded where the object is really to ascertain if I be truly innocent. To me they are perfect strangers except in the character of clients. It was a great calamity that I was denied the opportunity of putting all the four prisoners in the Box separately at the Trial. Upon reviewing the evidence it will be seen that whilst an immense number of undeniable facts have been proved to show the guilt of all the other parties, not one fact has been proved against me in respect of which it can be said my guilt is satisfactorily proved. The extraordinary power talent and energy of the prosecution has indeed brought to bear a variety of circumstances from which guilt may be inferred by some minds but every one of such circumstances are at the same time quite compatible with my innocence - whilst the evidence I am prepared to submit is directly demonstrative of it. I am anxious to produce all my books and papers and to produce if I may be allowed all my clerks for examination. In passing [HO43] sentence the learned judge spoke of the other Prisoners as my “associates”. They were indeed associated in the charge but in no other sense did the term apply. I never knew either Mrs. Dorey Mrs. Sanders or her Husband except in the fictitious characters they represented nor ever saw either except in the office and at the Bank. I never was upon terms of intimacy even with Fletcher I never was at his

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<sup>53</sup> See William Kenney (1961) 33:1 ‘Addison, Johnson and the “Energetick” Style’ *Studia Neophilologica* 1, 103-114, including: ‘In the last half of the eighteenth century, the style of Addison was contrasted unfavorably with that of Johnson, such words as “weak,[“] “feeble”, and “enervated” being applied to it. Johnson’s, on the other hand, was called “nervous”, “vehement”, “forcible”, and “strong”, these terms being used synonymously with “energetick”, the word most often selected to designate a highly conscious style in which a powerful intellect revealed itself by marshalling arguments for the moral life.’

house in my life nor he at mine except in my office. Our correspondence indeed shows that we were by no means upon terms of great familiarity. I never met him at any place but my office in the six years that I was concerned for him except I think upon two occasions at the Bank and once when he introduced me to Philpot his Broker at Philpots office.

The Prosecution against me has been conducted with a vigour absolutely overwhelming. Whilst I was kept close prisoner I heard from day to day of the astounding power that was lavishly employed to secure my conviction - when I was struggling against every difficulty - my heart sank within me. I trembled lest might should overcome right. It has done so. After my apprehension my partner observed to several persons [HO38 – out of order] “Barber is as innocent as I am. If he is guilty I am guilty” – “He has nothing to fear but the power against him.” It is that power - that combination of [terror] money influence and legal ingenuity that has triumphed over me and trodden my innocence underfoot.

Mr. Freshfield has declared that he had a strong impression of my guilt. I do believe this. It was an impression however produced by an exparte view of my case and most unfair representations to prejudice his mind. Besides which he had not the evidence which can now be adduced. I do hope that a sense of justice will render him free to promote a late but timely justice as he has been vigorous and skilful in obtaining my conviction.

That Mrs. Dorey’s evidence as well as the Sanders’s would have supported my innocence if I had been permitted to avail myself of it by the Prosecution is now proved by her published confession, a confession made to [conciliate] the prosecution and in which if she could have involved me to assist it she would have done so. I [learn] that in every material point she confirms the instructions I gave to my Counsel. The Conduct of Fletcher and this woman has been so infamous that her statement would be entitled to little credit but that she made such statement when her [HO39] interest was not to serve but to prejudice me. Shortly after her apprehension when she seems to have felt some remorse for the misery she had brought upon others she declared to her medical attendant at the Compter that I was innocent. As to Fletcher I have never spoken to him but once since my first committal to the Compter and this was after the Trial. I then expostulated with him for so cruelly deceiving me. He said he was very sorry. I observed at least you ought now to declare the truth. He said that would be of no use to me now. I replied be that as it may you ought to do it. He said they (alluding I presume to some of the authorities at Newgate who had spoken to him on the subject) asked me if I would sign to say you knew nothing of the Business. I replied “you know I had no suspicion of the fraud, that I never knew the Will was a forgery.” He said “yes that I would have signed” and here we were separated.

I submit however that this conversation with me is far more satisfactory evidence than any declaration which this crafty hypocrite and heartless man could make.

Before the trial I placed in the Governor of the Compters hands a letter requesting him to have it delivered to Fletcher and urging him to declare the real facts as far as I was concerned with these cases. The Governor however dissuaded me [HO44] from communicating with him in anyway observing that nothing which he could say could benefit me.

Allow me to remind you Sir of the principle of our law which declares it to be better that ten guilty persons should escape than that one innocent man should suffer.

I have ever been led to believe that the Government of this Country is not more desirous of prosecuting the guilty than of seeing that the innocent be not involved with them. I beseech you Sir whilst the means of establishing my innocence are yet open to save me from the [...] agonies to

which I am at present condemned. I humbly submit that a sufficient example will be made in the punishment of the four parties clearly guilty and to my profession an example of sufficient terror will exist in the suffering and hazard to which I have been exposed from the mere fact of such a transaction having passed through my office. I may call the almighty to witness that the object nearest my heart was to reflect credit upon the most respectable office in which I spent sixteen years of my life and to be an honor to that branch of the Profession to which I belong. I solemnly declare that I have never knowingly performed an act to militate against that object. That I have brought the whole of this disastrous prosecution upon myself by the refusal to give up at once and when first applied to Fletchers [HO45] name I am acutely sensible. Mr. Freshfield has stated since my apprehension to Mr. Gedye that had I done so I should not have been prosecuted. The [perspicacity] of my conduct in that respect has been [sic] matter of great difference in opinion. Several persons of good judgment and high in office have expressed their decided opinion that I acted rightly and shewed only a due regard to the professional duty I owed to a client whom I believed innocent. Mr. Freshfield never applied to me a second time. Had he done so as I fully expected I should have presumed that the error under which I believed him labouring did not exist and I should have thrown off all reserve. But whether I committed an error of judgement or not in this respect I beg leave to ask you Sir with great humility and deference whether guilt or innocence is most fairly to be inferred from it. Had I been guilty should I not at once have given up Fletcher and secured the opportunity of protecting myself by becoming a witness against him? Should I have quietly waited in my office three weeks with the absolute certainty of apprehension for this crime with the perfect knowledge of its awful [HO46] responsibility? The learned Judge in summing up alluded to the arguments of my Counsel "that all proceedings were stamped with innocence from the open and unguarded manner in which they were undertaken" and his Lordship observed that such was of necessity "as the publick offices were not open in the night"! With great respect and deference to the learned Judge I would point out that the argument of my Counsel was of great force and that it ought rather to have been recommended to the attention of the jury then weakened by such a remark as that which fell from his Lordship. It was not "of necessity" in the slightest degree that I should have exposed myself as I did. My partner attended to the Business in several of its stages. Had I been guilty should I not have adopted the example of the guilty Fletcher and his gang? He introduced them to me in false names with false addresses and their persons disguised. Fletcher himself avoided any step which he thought might fix him. Why should I have been led to perform the most dangerous duty? Had I been wicked enough or [mad] enough to be party to such a fearful design I should have been wicked enough to have placed another person in the position of danger. I was present when the will was proved. This uttering is the very body of the offence. Had I requested Bircham to do this he would have done it as a matter [HO47] of course. He then would have been the accused. Bircham who had known Fletcher for 2 years had the same confidence in him that I had. It could not be said that I went through all the danger of attending at the Bank in company with the pretended Emma Slack believing that the fraud would never be discovered. On the contrary the fact of the £3500 and Dividends having been received was sure to be discovered the very first time Miss Slack of Abbots Langley went to receive her Dividends from the fact of her being entered "deceased". The fact of her being so entered I knew full well as appears by entries made in both Bircham's diaries and mine whilst the business was in progress. As a matter of course I knew full well that this circumstance would lead to inquiry.

In this statement I have mainly confined myself to what did not appear at the Trial. The statements of Sanders and his wife - the confession of Mrs. Dorey - the Eve. [evidence] of Mr. Bramall and the correspondence with Fletcher did not appear. I am most ready and anxious to explain every

circumstance that may seem to require it. Whatever doubts may be raised from some complication in this case allow me Sir to entreat your attention to this which I submit is clear beyond all doubt namely that Fletcher ascertained through [HO48] Christmas by comparing the handwriting that Miss Slack of Abbots Langley was the owner of the £3500 stock. That he reported to me that she was not the same person. There is the distinct declaration to this effect in his own handwriting. It was proved by Christmas that he never made any communication to me indeed I had no knowledge who Fletcher's informant was but the summing up and verdict focused upon the assumption that Christmas's communication to Fletcher was correctly reported to me. Not only was there no evidence of this but I trust I have now shewn directly the contrary.

The comparison of handwriting took place about the middle of January during two months afterwards although he perfectly well knew that Miss Slack of Abbots Langley was the true owner he pretends that he is seeking for the real owner. This is clearly shown by his letters, all the entries in the office Books and his advertisement in the Bath Paper.

I humbly but confidently ask would it have been necessary thus to deceive an accomplice?

The deception is kept up to the last moment. He speaks for himself upon oath. He says he introduced the woman as Emma Slack [-] that we were strangers - that he lent her the £80 - that he attended afterwards to receive this and that she paid him in my [HO49] presence the £80 back with £5 for the loan. Would this precious mockery of a settlement have been necessary had I been an accomplice? Would the extract from the false entry of death have been necessary or even the taking of lodgings in Francis St - nor am I fairly chargeable with blindness or stupidity. There was nothing remarkable to create suspicion especially towards a man whom I considered respectable. He was so regarded by his Bankers who knew as much of him as I did. But if negligence be guilt nearly all the parties through whose hands this fatal business passed are guilty. The Registrar it appears entered the death at a place which has no existence although said to be close by his residence. The Proctor passed over a Will said to be suspicious on the face of it without any remark. The conduct of Christmas is most striking as I have shown - finally the Bank authorities who as it is peculiarly their duty to be, are generally most vigilant treated the Testatrix as the owner of both the £3500 and a sum of £6000 of which Miss Slack of Abbots Langley constantly received the Divds.- although the sum of £3500 was alone mentioned in the Will and the property of the Testatrix was sworn under £5000.

[HO50]

Still the Bank made no remark or enquiry of my partner when he lodged the Probate or on his subsequent enquiries as appears by his letter to Fletcher reporting the result. But if I have been negligent, if I have placed too implicit a confidence in a client's integrity I have already paid a severe penalty for it. Guilty I am not in the very slightest degree.

I therefore humbly but most earnestly pray

That you will direct the circumstances of my case to be enquired into, in the spirit of calm and impartial investigation and that I may be permitted personally to explain such points or facts as may appear to require it, and to submit the evidence I have referred to with or without assistance as may be thought right. I am quite aware I cannot ask this as of right but I earnestly supplicate for it as a merciful [interposition] of Justice. I am indeed not guilty! Of this I feel confident you will after such enquiry be so far satisfied as to recommend her most gracious Majesty that though my conduct may appear negligent yet that [HO51] in consideration of

my past sufferings and losses, of my previous unsullied reputation and the very doubtful evidence upon which I have been convicted to release me from further suffering and to grant me a free Pardon.

But if I may not hope for so entire and blessed a dispensation of Justice I do humbly but most earnestly implore that the awful sentence passed upon me may be commuted to the utmost extent prescribed by the Law.

Permit me ere my powers of mind and body are entirely destroyed by sorrow and suffering to resume the course of honorable industry from which I have been most cruelly driven by the overwhelming prosecution brought upon me through the systematic and heartless deception of Joshua Fletcher.

I have the honor to be

Sir James

Your most obed. & very humble servt.

WH Barber

The Right Honorable

Millbank Prison

Sir James R,G, Graham

21<sup>st</sup> May 1844

[HO27 – out of order in Home Office file, probably an introduction or afterword:]

I know it may be said that the proper time for submitting much of what is here advanced was the Trial but I humbly hope it will never be considered too late to rescue an innocent man from [unrelieved] misery and degradation. I have no powerful or influential friends to press my appeal upon your attention. I received my Articles as the reward of eleven years faithful service, and the extensive Practice I obtained was by my own unaided exertions. Upon the merits of my case and your love of Justice I fervently rely in this my hour of extremity.

I have not attempted to present an [entire] view of the Case but I have addressed myself to its important features and every portion of my statement will be found to be correct in the minutest particulars.

[ends]

## Appendix 20 Supplement to Petition to Sir James Graham 24 May 1844

### Letter from Barber to Sir James Graham<sup>54</sup>

To Sir James Graham

Sir,

In the memorial which I have had the honor to submit the agonized state of my mind has I fear produced some ambiguity and possibly some discrepancy; but as I value my liberty and my character and as I shall answer for the assertion to Him “before whom all hearts are open” I declare that every word is strictly perfectly true and the chief portions of which are capable of proof.

I have had no opportunity of reading Mrs. Dorey’s confession but if she has truthfully detailed all the circumstances they will be found to harmonize with every entry in my Books where every step was daily recorded with the other entries of the office Business. In reference to Sanders and his wife it would be of great importance that they should be desired to set out every circumstance. Especially as to those points where my conduct may appear most questionable – a simple declaration of my innocence, though not unimportant, would be less conclusive than such details as could admit of confirmation. I fervently hope that no technical formality may be allowed to present a barrier between me and justice in my terrible situation. Let but a fair enquiry be made and by Gods [sic] blessing my innocence may yet be established to the satisfaction of every unprejudiced mind. Above all I implore that the enquiry may [HO152] be made in the spirit of truth and equity - not in the spirit of Prosecution - nor let a mistaken and overheated desire of “example” trample me under foot. The immolation of the innocent with the guilty would be a sorry example in a Christian land.

In passing sentence the learned Judge observed that the Judge who tried the cause “concurred with the Jury” [sic] more correctly might be said that after a struggle of an hour and a half the Jury gave in to the peculiar view taken by his Lordship. His Lordship directed the Jury if they ‘thought’ Fletcher reported to me correctly what Christmas told him I must be found guilty. Surely facts proving guilt must be clearly established and the Jury is not to leap to a conclusion unfavorable to a prisoner. There was not the slightest evidence of such communication to me whilst the direct contrary was the fact as I trust I have now clearly shown. I have reason to believe that members of the Jury have deeply regretted having consented to the verdict - but assuming that the learned Judge and the Jury were right upon the case as presented they had not the facts properly before them.

Great stress has been laid upon the argument that the transaction could not have been carried through without my aid and the influence of my position. [HO153] This is not quite correct as the aid of a solicitor was not necessary and the whole might have been done without me, altho’ it is very usual to employ a solicitor. When Fletcher introduced Mrs. Sanders as Miss Slack she said “I am told Sir a Solr. is not absolutely necessary” I replied no not essential. Fletcher said it will save you much personal trouble. She asked the probable addl. expense of employing a Solr. I said ten or £15. She said if it would not exceed that she would prefer to have my assistance. With more truth might it have been said the Business could not have been done without the aid and influence of a Proctor and StockBroker whose conduct is not impeached altho’ quite as capable of misconstruction as mine.

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<sup>54</sup> HO151-154.



It was proved that I served a clerkship with those respectable Solrs. Messrs. Scoones of Tonbridge in Kent of 16 years duration with honor and integrity. A host of witnesses proved that during the 7 years I have been practicing [sic] in London my conduct as a Solr. and a member of society has been exemplary.

In 23 years of unwearied labour I acquired a position of great comfort and the confidence and esteem of a large circle of friends and clients. I am now without a particle of crime and without ever having associated with criminals (for with the other Prisoners I never did associate) in the depths of misery and disgrace. From my prison cell I appeal to you for succour. Permit not I beseech you the claims of state affairs to make you disregard the supplication of a lingering Prisoner. To a paternal Government whose highest privilege and duty it is to [HO154] protect and save the defenceless innocent even at the eleventh hour I appeal in the name of the deity who now watches my [illegible] and knows my innocence I appeal for deliverance.

Awaiting, Sir, in the deepest anxiety your attention to my prayer and which I shall ever remember with a grateful heart to my lifes [sic] end.

I have the honor to remain

Sir James

Your most obedient and humble servant

W.H. Barber

The Right Honorable

24<sup>th</sup> May 1844

Sir James R.G. Graham

## Appendix 21 Letter from Freshfields to Secretary of State 25 May 1844

New Bank Chambers<sup>55</sup>

May 25<sup>th</sup> 1844

Dear Sir,

We understand that a petition has been presented to the Secretary of State on behalf of William Henry Barber applying for a remission of the Sentence passed on him on his trial for uttering the forged Will of Anne Slack - and that the subject is now undergoing investigation by the Inspectors of Prison Discipline.

We are not aware of the nature of the application or the grounds on which it is supported, but we have thought it right, on being informed of the circumstance to suggest to you that a Copy of the Petition, and any Statement accompanying it, should be furnished to us – in order that we may be enabled to report any information we may possess upon the facts. In the course of the investigations connected with the Will forgeries, we obtained a great deal of information relating to Mr. Barber, his connexions, and his business; the knowledge of which would materially assist the enquiry into any Statements furnished by him or on his behalf, and we would add that on the result of our own experience in the investigation of these forgeries, we do not think it probable that any person could arrive at a true conclusion on statements made, or references given, exclusively thro' sources pointed out by Mr. Barber. We need hardly add that in making this communication our only desire is to place at the disposal of the proper authorities, information obtained by us in an official capacity which may be useful in the furtherance of their own objects.

We are Sir ...

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<sup>55</sup> HO146-148.

## Appendix 22 Public petition seeking mercy for William Sanders, May 1844

To the Queen's Most Excellent Majesty.<sup>56</sup>

The humble Memorial of the  
undersigned inhabitants of the City  
and County of Bristol

Sheweth

That William Sanders late of Broad Street in the said City and County of Bristol Fishmonger was convicted at the Central Criminal Court in the City of London at the sessions held on the 8<sup>th</sup> day of April last for forgery of the will of one Mary hunt and was sentenced to be transported for seven years.

That for the period of nine years or thereabouts said William Sanders carried on the said business of a Fishmonger in Broad Street aforesaid and always conducted himself with great propriety and integrity and was much respected amongst his neighbours up to the time of the commitment of the said crime for which he stands convicted.

That the said William Sanders has four children, three of whom are dependant [sic] upon him for their livelihood.

That your Memorialists have been informed and believe that the said William Sanders at or about the time of the commitment of the offence for which he has been sentenced to be transported as aforesaid was in necessitous circumstances and your Memorialists have good reason to believe that he was induced by his necessities to lend his assistance to Joshua Fletcher (who is under sentence of transportation for life for a similar offence) in carrying out the scheme laid by the said Joshua Fletcher involving the crime of forgery aforesaid.

That the wife of the said William Sanders is under sentence of imprisonment for two years so that their children are thrown upon their own hands without anyone to control or guide them.

And your Memorialists humbly entreat that your Majesty will be pleased to extend your royal mercy to a commutation and mitigation of the sentence and punishment of the said William Sanders so that he may not be banished his country.

And your Memorialists as in duty bound will ever pray

[Signatures]

[ends]

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<sup>56</sup> Record ID fpb TNA/CCC/2C/HO18/00270765 [Full record at findmypast.co.uk](https://www.findmypast.co.uk) (requires subscription)

## Appendix 23 Petition of William Sanders 20 June 1844

Harmar<sup>57</sup>

Sir James Graham is respectfully requested to submit the accompanying petition to her Majesty + to make known her Majesty's answer thereto to

Mr William Harmar

Solicitor

St. John's Bridge

Bristol

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<sup>57</sup> Title page. Formatting added. Available on Findmypast.com

To the Right Honourable Sir J R G Graham one of her Majestys Secretarys of State

The humble Petition of William Sanders late of Bristol Fishmonger now a prisoner under sentence of transportation in her Majestys Prison Millbank

your humble Petitioner was arraigned with others at the last April sessions of the Central Criminal Court for having in the month of May 1842 uttered a Will purporting to be the Will of one Mary Hunt knowing the same to be forged to which indictment your humble Petitioner pleaded guilty and was sentenced to be transported for seven years - your humble Petitioner begs his case may be taken into consideration, that for some years previous to uttering the said Will your Petitioner resided in the city of Bristol

about the month of February 1842 was visited by Joshua Fletcher included in the aforesaid inditement and induced to take the part he acted being at the time in a state of pecuniary embarrassment

that as soon as your Petitioner was aware that enquiries was [sic] instituted he determined on rendering to the prosecutors all the information he could and before he was known to the prosecutors to have taken any part in the transaction accompanied by his solicitor Mr Wm. Harmer on the first day of January 1844 left Bristol for London for the purpose of surrendering himself and on the following day Mr Harmer had an interview with the solicitors for the prosecution Messrs. Freshfields to whom the offer was made but declined your Petitioner having drawn conclusions from his knowledge of the transaction which the solicitors for the prosecution did not deem proper to admit

that he was prepared to come forward when called on for which purpose your Petitioner was in correspondence with his solicitor up to the period of his apprehension –

that from the age of your Petitioner 48 [sic] the sentence of seven years must in all human probability nearly equal that of his life.

and your humble Petitioner trusts that this being the first offence that he was ever charged with that it will have your merciful consideration and again to restore him to liberty and your humble Petitioner as in duty bound will ever pray

W Sanders

June 20<sup>th</sup> 1844

William Sanders or Saunders, age - 47 convicted in the Central Criminal Court the 8th April 1844 of feloniously inciting a person to forge and utter a Will and sentenced to seven years transportation was received into the Millbank prison the 27th April 1844

[ends]

## Appendix 24 Petition by Robert Peckham

### Petition by Robert Peckham, June 1844<sup>58</sup>

... the Honorable Members of the House of Commons

The humble Petition of Robert Peckham of no. 5 Verulam Buildings Grays Inn humbly  
Sheweth

That your Petitioner received by the Post the annexed Document being a Declaration by Joshua Fletcher of the innocence of his fellow Convict William Henry Barber (the latter having been convicted of uttering a Forged Will with a Guilty knowledge).

That your Petitioner yesterday proceeded to the Convict Ship lying off Woolwich named the Agincourt on board of which such Declaration was signed.

That your Petitioner there saw the said Joshua Fletcher and enquired of him (showing him the said annexed Declaration) if that were his (Fletchers) signature to which he replied “Yes.”

Your Petitioner then said “You allege there that Barber is perfectly innocent” to which Fletcher replied “Yes certainly – I never said any thing to the contrary”.

Your Petitioner further sheweth that he has been informed and verily believes that William Saunders, Lydia Saunders, his Wife, and Georgina Dorey have frequently asserted the innocence of the said William Henry Barber and that the said Joshua Fletcher William Saunders and Lydia Saunders would if applied to furnish a true report of their connection with the Frauds – the division of the Plunder [?] which in your Petitioner’s opinion would fully establish the fact of the Jury having [?] an erroneous Verdict in convicting the said William Henry Barber.

Your Petition[er] under these Circumstances humbly prays that the departure of the said William Henry Barber and Joshua Fletcher will be delayed until such enquiries have been made as to which your Honorable House may deem expedient.

And your Petitioner will ever pray.

[ends]

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<sup>58</sup> HO139-140.

## Appendix 25 First Declaration by Fletcher 28 June 1844

### Transcript<sup>59</sup>

June 28.

I solemnly declare that, to the best of my knowledge and belief, William Henry Barber had no guilty knowledge that the will of Anne Slack was a forgery, or that it was otherwise than a legitimate and proper matter of business. As such it was introduced by me to him, as stated in my first examination at the Mansion-house. And I further declare, that ~~I verily~~ *to my knowledge and believe* he had no guilty knowledge of either of the cases which have recently formed the subject of indictment. I make this declaration with no other motive than to do an act of justice to Mr. Barber as far as lies in my power.

JOSHUA FLETCHER

(Witness)

MATTHEW HALL CUTTRIS

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<sup>59</sup> HO138. The amendments shown here are in the original handwritten document.

## Appendix 26 Second Declaration of Fletcher, 1 July 1844

### Further Declaration of Joshua Fletcher<sup>60</sup>

It may be proper that I should state, in furtherance of the Declaration I made on the twenty eighth day of June last, that, to the best of my knowledge and belief, William Henry Barber had no knowledge of Mrs. Richards than as Miss Stewart, of Mrs. Dorey than as Miss Burchard, of William Sanders than as Thomas Hunt, or of Lydia Sanders than as Emma Slack, [- they having respectively represented themselves to him as Elizabeth Stewart, Eliza Burchard, Thomas Hunt, and Emma Slack, in my presence.<sup>61</sup>]

With regard to the Will of Anne Slack, he could have no knowledge whatever of it, until Mrs. Sanders, personating Emma Slack, produced such Will to him, which she did in my presence; and from the manner in which the several matters were introduced to him, and appearances preserved, there was nothing to excite the suspicion of a prudent solicitor. I was a client of Barber's of some years' standing, and of independent property; as such, he had known me since he first became my Solicitor. He read the Will with attention, and asked several questions which Mrs. Sanders answered without any apparent embarrassment and to satisfy his enquiries, she produced to him a certificate of the Registry of her Aunt's death at Pimlico. And I feel further bound to state, that Mrs. Sanders presented herself to Mr. Barber disguised - wearing light hair, and affecting to have the gout in her hands and feet, which seemed to support her alledged [sic] relationship to the assumed Testatrix, who appeared from the certificate produced to have died of Gout.

And to the best of my knowledge and belief, Mr. Barber had no share of, or other participation in the proceeds of the above transactions, or either of them, beyond his proper and usual professional remuneration.

I should also state that he has been concerned for me as my Solicitor generally, and that I had employed him to negotiate terms with several parties whom I had traced out as the true owners of unclaimed Dividends, and who were put into possession of such property, so that he had no reason to suspect any of the cases for which he has been prosecuted were in the slightest degree irregular, or improper.

[HO2] It was under my instructions that he wrote to Captain Foskett, and the object of which was to ascertain if his sister-in-law was the owner of the Stock. I reported to Mr. Barber that she was not the owner of such stock, as her handwriting was wholly dissimilar; and as the owner of it had executed a Power of Attorney upwards of ten years before, which Capt. Foskett's sister-in-law was then incompetent to have done, she being at that time, from Capt. Foskett's own statement, a Minor. The report I so made to Mr. Barber was grounded upon information which I received from Christmas, the Bank Clerk.

If the application made by Barber to be tried seperately [sic], so that he might have elicited the whole truth, by calling myself and the other parties accused, had not been resisted by the Prosecution, he must have been not only acquitted, but completely exonerated from the slightest culpability.

As I understand, it has been stated that I have refused to admit Mr. Barber's innocence, I feel called upon to contradict this, and to state that I have only objected to sign or, declare that which might have a tendency to prejudice myself.

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<sup>60</sup> HO1-2. Original from Home Office file.

<sup>61</sup> This text was added in handwriting to the original as written.



Joshua Fletcher

The above statement was committed to writing by me from the instructions of Joshua Fletcher.  
William McCallum

Signed by Joshua Fletcher in presence of

On board the ship	)	Chas. Hy. Fuller
Agincourt	)	Surgeon R.N.
2 <sup>nd</sup> day of July 1844	)	Superintendent
		Agincourt Convict
		Ship

## Appendix 27 Amended version of Fletcher's second Declaration of 1 July 1844

### Further Declaration of Joshua Fletcher<sup>62</sup>

It may be proper that I should state, in furtherance of the Declaration I made on the ~~twenty eighth day of~~ 28<sup>th</sup> June last, that, to the best of my knowledge and belief, William Henry Barber had no knowledge ~~whatever~~ of Mrs. Richards than as Miss Stewart, of Mrs. Dorey than as Miss Burchard, of William Sanders than as Thomas Hunt, or of Lydia Sanders than as Emma Slack, [- they having respectively represented themselves to him as Elizabeth Stewart, Eliza Burchard, Thomas Hunt, and Emma Slack, in my presence.<sup>63</sup>]

With regard to the ~~W~~will of Anne Slack, he could have no knowledge whatever of it, until Mrs. Sanders, personating Emma Slack, produced such ~~Will~~ to him, ~~which she did~~ in my presence. And from the manner in which the several matters were introduced to him, and ~~in which~~ appearances ~~were preserved~~ observed, there was nothing to excite the suspicion of ~~any~~ prudent solicitor.

I was a client of Barber's of some years' standing, and of independent property; ~~As such, he had known me since~~ ~~from the time~~ he first became my Solicitor. He read the ~~W~~will in question with attention, and asked several questions which Mrs. Sanders answered without ~~any apparent appearance of~~ embarrassment; and to satisfy his ~~enquiries~~, she produced to him a certificate of the Registry of ~~her~~ the Aunt's death at Pimlico. And I feel further bound to state, that Mrs. Sanders presented herself to Mr. Barber disguised - wearing light hair, and affecting to have the gout in her hands and feet, which seemed to support her ~~alleged~~ relationship to the assumed testatrix, ~~who appeared from the certificate produced to have died of Gout.~~ ~~The certificate set forth that the deceased died of gout in the stomach.~~

And to the best of my knowledge and belief, Mr. Barber had no share ~~of, or other~~ participation in the proceeds of the above transactions, or either of them, beyond his ~~proper and usual~~ professional remuneration.

I should also state, that he has been concerned for me as my ~~S~~solicitor generally, and that I had employed him to negotiate terms with several parties whom I had traced out as the *true owners* of unclaimed ~~D~~dividends, and who were put into possession of such property, ~~so that he.~~ He had ~~therefore~~ no reason to suspect, ~~as far as I know~~, that ~~any of~~ the cases for which he has been prosecuted were in the slightest degree irregular, or improper. It was under my instructions that he wrote to Captain Foskett, and the object of which was to ascertain if his sister-in-law was the owner of the ~~S~~stock. I reported to ~~Mr.~~ Barber that she *was not the owner of such stock*, as her *handwriting was wholly dissimilar*, and as the owner of ~~it~~ the stock had *executed a Ppower of Aattorney upwards of ten years before*, which Captain Foskett's sister-in-law ~~was then~~ would have been incompetent to have done, she being at that time, *from Captain Foskett's own statement*, a ~~M~~minor. The report I so made to Mr. Barber was ~~grounded~~ ~~formed~~ upon ~~which that~~ I received from Christmas, the Bank ~~C~~clerk.

If the application made by Barber to be tried ~~sepearately~~ (so that he might have elicited the whole truth, by calling myself and the other parties accused) had not been resisted by the ~~P~~prosecution, he must have been not only acquitted, but ~~completely~~ exonerated from the slightest culpability.

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<sup>62</sup> BB (1853, 9th ed.) 104-105 (85-86).

<sup>63</sup> This text was added to the original as written.

As I understand, it has been stated that I have refused to admit Mr. Barber's innocence; I feel called upon to contradict this, and to state that I have only objected to sign or declare that which might have a tendency to prejudice myself.

Joshua Fletcher

~~The above statement was committed to writing by me from the instructions of Joshua Fletcher.~~

~~William McCallum~~

Signed by Joshua Fletcher in presence of

On board the ship	)	Chas. Hy. Fuller
Agincourt	)	Surgeon R.N.
2 <sup>nd</sup> day of July 1844	)	Superintendent
		Agincourt Convict
		Ship

Signed and declared before me, on board the *Agincourt*, at Woolwich.

CHAS. Hy. FULLER R.N., Surgeon Superintendent.

## Appendix 28 Letter from Barber to Freshfields, 5 July 1844

Ship Agincourt<sup>64</sup>

5<sup>th</sup> July 1844

To Charles Kaye Freshfield Esquire

Sir,

The agonising situation in which I am placed will I trust plead my apology for my now addressing you. The consummate skill with which you have wielded the resources at your disposal has raised a presumption of guilt against and obtained the conviction of an innocent man.

That you had to use your own words “an impression of my guilt” I firmly believe, but as I shall answer for the assertion at that awful [?] where we must both be tried by him “from whom no secrets are hid” I declare that I am as innocent of all guilty knowledge or suspicion of wrong as the Judge who tried me. My friends are few and powerless - my history is known to you. By 17 years clerkship I obtained the rank of a solicitor. In 7 years I secured a varied and extensive practice. I was happy in the retrospect - happier still in my prospects - respected and, those who knew me would readily add, useful in the sphere in which I moved. By a single stroke, as with a blast of lightning I am impoverished, degraded, broken hearted and miserable. I write this amidst a scene of riot and uproar horrible and painful, despite of the best exertions, to preserve order. I am almost the only thoroughly sad and melancholy being in the Ship. In my anguish I appeal to you - I entreat you in the spirit of Christianity to reconsider the circumstances of my case. True I have been convicted by judge and jury – but [133] permit me to remind you of the terrible inequality of the struggle. You had every advantage. I had not one - unless I count my innocence as one - but which alas proved useless where I had not the opportunity of eliciting the truth. Your influence, your pecuniary, legal, + intellectual resources were unlimited - all these it is scarcely too much to say were mainly directed to make good a conviction of myself. Not a difficulty or a doubt could have existed as to either of the other prisoners - notwithstanding all their precautions nothing could escape your vigilance. I was lingering in prison – without money and almost without friends - heartbroken and in illhealth - under these difficulties I had to get up a defence against the fearful and complicated charges preferred against me. You will I think admit that a case of suspicion only has been established against me - founded indeed upon an amalgamation of circumstances selected from a mass of information which your means enabled you to acquire - but all of these circumstances unfortunate and even suspicious as I myself felt the whole are nevertheless compatible with my innocence.

My Instruction to Counsel was to lay every fact before the Court, to submit all my Books and Papers and to produce for examination my clerks and every person who had a knowledge of the matter and of my own affairs. In the exercise however of his judgment he deemed it unnecessary to call evidence - and certainly I must say it appeared to me that though the evidence was submitted and marshalled with such consummate skill it [HO134] was not such as to justify a verdict against me.

I had indulged the hope that I should be allowed to submit my Books Papers and other evidence to Sir James Graham according to my earnest entreaty that I might have an opportunity of explaining every circumstance that might seem to require it. Indeed ever since my apprehension I

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<sup>64</sup> HO133-135.

have been ready and desirous of affording every information - but in truth I who had been but the blinded professional instrument of a gang of thieves craftily introduced by Fletcher whose respectability no Solicitor would have doubted had but little to communicate. The presence of Fletcher here who has made so foul a use of my confidence in his integrity is no slight aggravation of my sufferings. You are probably aware that he has at length thought fit to declare the truth and to admit my innocence. This appears to have arisen out of a conversation he had with some intelligent persons on Board.

I should attach but little importance to anything which he might be pleased to assert deny or admit but that it is in accordance with the declarations of all the other prisoners and Mr. Sanders can tell whether the facts set out in his second statement are true or not.

The whole of the other prisoners have now declared my innocence at different times and under different circumstances – without concert with me in either case and without even access to or communication direct or indirect with 3 out of the 4. That Mrs. Dorey avowed my innocence shortly after her apprehension (and before she thought of benefiting herself by prejudicing me) [HO135] is well known. She declared this to her Medical attendant at the Compter and to other persons.

Surely in the absence of all direct proof of my guilt it is not consistent with Justice or humanity to disregard such statements. In no instance could they benefit those who made them but rather the contrary. I entreat you Sir to consider the whole circumstances calmly and divested of the spirit of prosecution. In doing so you will I am sure not overlook the facts well known to you – my industrious and frugal habits and the state of my pecuniary affairs. Daily I pray that the Almighty will shed the light of Truth on my heartrending case and conciliate my all powerful prosecutors. If under the circumstances you cannot utterly satisfy your mind of my innocence I think you must with all your prepossessions against me, feel that my case is not unattended with doubt. I implore you to consider as a humane man and a Christian the frightful hardship of my situation if innocent! Nay were I guilty is such a sentence which could not have been exceeded in the case of the most hardened desperate and irreclaimable Criminal that ever was tried not too severe in my case.

I beseech you Sir to listen to my prayer offered to you in abject misery and helplessness and your magnanimity shall receive the heartfelt gratitude of one of the most unfortunate men that ever belonged to your or any other profession.

I have the honor to remain

Sir

Your most humble Servant

W H Barber

## Appendix 29 Letter from Barber to *The Times* of 8 July 1844

TO THE EDITOR OF THE TIMES<sup>65</sup>

Sir, - As I have unfortunately occupied for some time past a conspicuous place in your columns; I trust you will allow me to communicate one or two facts for the information of those who have taken an interest in my painful case. It must have surprised many that no evidence was called on my behalf, and some have assumed, perhaps, that I had none of importance to offer. My evidence, and which was set out in the brief, was, however, of the greatest importance, and which it was always most fully intended should be adduced. Mr. Parry, in his advice on the evidence, speaks of the documentary portion as "most valuable," and the oral testimony as "most important." It was my desire that the Court should be put in possession of the utmost possible information, and with this view counsel were instructed to call all the clerks of the house, to submit all the office books and every paper connected with the case - to put into the box a witness who was had up from Bath for that purpose, and who had been remaining in town several days, who would have proved the elaborate pains taken to prevent my detecting the imposition; also several parties who had transactions with me, who would have proved facts raising the strongest possible presumption against my being a guilty participator in these frauds. The correspondence with Fletcher, too, would have shown how studiously he had misled me, and that the business was conducted by myself and Bircham precisely like the other business of the office. It will naturally be asked why these were not called? My counsel alone can fully explain it. I was astonished beyond measure when Mr. Wilkins, at the close of his very able address, immediately called witnesses to character only. I certainly thought, that skilfully and ingeniously as the evidence was produced against me, a verdict of guilty could not be pronounced, and Mr. Wilkins appears to have reckoned with perfect confidence on a favourable verdict. It is with painful reluctance that I thus express my regret at the course adopted by my counsel, as I feel the warmest gratitude to both Mr. Wilkins and Mr. Parry for the generous manner in which they took up my defence, whilst their fees were almost nominal. From the perusal of my briefs, and from Mr. Parry's conferences with me, counsel knew well my perfect innocence. To Mr. Wilkins I cannot but feel the utmost gratitude, not only for his great exertions at the trial, but for the generous sympathy he has manifested since. I am quite sure that upon a review of the facts that could have been proved on my behalf, he must have regretted that such evidence was not adduced, especially as it would have met the very points that were most dwelt upon by the judge; and, after all, it was not without great hesitation that the jury returned a verdict against me. Since my confinement in Millbank prison I have memorialized Sir James Graham to allow me to submit my books, papers, and correspondence, and to afford me an opportunity of personally explaining the circumstances which have created suspicion against me. I begged that each of the other prisoners might be desired to make detailed statements of all the circumstances in any manner affecting me. If this had been done, there is not the slightest doubt that my innocence would have been irresistibly demonstrated. I am quite aware that I had no legal right to such an inquiry, but as the only appeal for the correction of an error which condemns an innocent man to unspeakable misery is to the crown, I do think that every opportunity should be afforded to a prisoner to establish his innocence.

In my defence I have laboured under every possible difficulty; the public mind became greatly prejudiced against me by *ex parte* statements. I have been kept a close prisoner from the day of my apprehension - the 9th of December last, without money, in ill-health, and almost without friends.

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<sup>65</sup> *The Times* (1844) 'The Convict Barber; letter to the editor' 10 July.

In this deplorable condition I had to contend against the most formidable power that could be brought against an unfortunate man.

The struggle was too unequal; power has triumphed over innocence. The public has now seen the declaration which Fletcher has at length thought fit to make, having withheld it until all hopes of making terms with the prosecution were at end. This declaration was quite voluntary, for he assured there is not, nor ever can be, any connexion between me and this man beyond that which my painful position enforces. That his dark shadow should still cross my path is an additional drop of bitterness in the cup which I have already drained to the dregs. All the prisoners have now as with one voice proclaimed my innocence - Mrs. Dorey, Sanders, his wife (the Emma Slack), and lastly, Fletcher. These declarations were made at different times, under different circumstances, and without the slightest concert with me or with each other - not for their own benefit, but rather to their prejudice. That Mrs. Dorey did declare my innocence to her medical attendant and to others at the Compter, when she was first apprehended, and before she sought to make terms with the prosecution, is well known. But the declaration of Sanders was made under circumstances, and with the consistency and evident sincerity, which no impartial mind can consider without a conviction of my innocence. He is the husband of the pretended Emma Slack. When the report of the first examination in the case appeared in the public papers, he and his wife immediately took flight, not, however, without communicating with his solicitor. Sanders then assured him that I was wholly innocent. Upon his apprehension he was brought to the Compter; he then gave way to the bitterest anguish, saying to his medical attendant, and to others, "I am guilty, but there is one poor gentleman here who is innocent as a child unborn - that is, Mr. Barber; he (Barber) had every reason to believe that my wife was Emma Slack, as she represented herself to be."

He repeated this at Newgate to the chaplain, and to various other parties there, before and after his trial; he did the same at Milbank prison, and declared that Fletcher had always cautioned him against my detection of the fraud. Now, how can any reasonable mind regard this? It cannot be supposed that he was insincere, or that he could have been ignorant had I possessed a guilty knowledge. If a separate trial had been allowed me I should not only have called Sanders, but each of the other prisoners, as sworn by the affidavit at my solicitor's. I must not encroach upon your columns by noticing other features in my distressing case. Mr. Wilkins will pardon me for alluding to one point connected with his very eloquent defence. He attacked the prosecution with great determination. Now, I must admit that I brought the prosecution upon myself by withholding Fletcher's name, believing that the transaction would prove to be a correct one. That prosecution was certainly conducted against me with great severity; but the whole scope of my defence and my explanation of the circumstances raised against me was, that Fletcher had grossly misled me. It was of him therefore that I had the most reason to complain. My case is indeed a pitiable one: after seventeen years' clerkship in one house I attained the rank of a solicitor; in seven more of great labour and anxiety I obtained an extensive and valuable practice. I was happy in the retrospect - happier still in my prospects; my character and usefulness in society were proved by a host of respectable witnesses. I am now in the very depth of misery - my greatest fault being an implicit confidence in a client whom no solicitor would have distrusted. Not the slightest of my country's laws have I offended; my wretchedness is greater far than that of a guilty man; his mind would have been prepared, and his arrangements made. I write this amidst a scene of revelry and uproar; I alone am in agonising sadness. This morning the vessel sails to convey me from all that I hold dear on earth. Deeply, most deeply, do I lament that the friends I leave behind me, and to whom I was dearly attached, should be disgraced by me; that disgrace, however, arises only from terrible misfortune, not guilt. For that I am innocent of all guilty knowledge of a participation in these

frauds - that I shared none, no, not the least, of the unenviable plunder (all this is confirmed by those who alone could have a perfect knowledge on the subject - namely, those who employed me as their solicitor, and by whom the fraud was devised and consummated) more than the judge who tried me, I solemnly declare before God and man, and as I hope to enjoy peace in this world and that which is to come. And although I am at present unjustly suffering as a malefactor, I am not without hope that the time will come when my innocence will be both proved and acknowledged; when I shall be enabled to return into society, from which, but for an extraordinary and almost unparalleled combination of unfortunate circumstances, I should never have been driven.

Craving your pardon for occupying so large a portion of your valuable space, I have the honour to remain, Sir, your most obedient servant,

WILLIAM HENRY BARBER

Ship Agincourt, off Woolwich, July 8.



## Appendix 30 Letter Barber to Charles Kaye Freshfield, 21 September 1844

Simon's Bay, Cape of Good Hope<sup>66</sup>

To Charles Kaye Freshfield Esqr.

21<sup>st</sup> September 1844

Sir, I trust you will pardon my addressing you and putting you to the expense of postage, having really no means of prepaying it. You doubtless received my letter dated [Woolwich] and have also seen Fletcher's declaration of my innocence. This [I hear] was lodged with the Secretary of State, but the vessel sailed before any intelligence reached me of the result.

Although I understand it has been supposed that declarations of Sanders and his wife of my innocence are not conclusive, as they might have been in ignorance of my guilty knowledge, the most prejudicial mind will, I conceive, not apply the same observation to Fletcher's. His declaration must be [conclusive] unless it be suspected that he has stated what is untrue. I would to God you could look into my heart and see how entirely innocent I am and that you also knew the real state of feeling between Fletcher and myself; but in order to prove to you how little I am indebted to him for any statement emanating from friendly regard, I beg leave to invite your perusal of the enclosed documents. Assured as I have been that you are a benevolent man, and of Christian principles I cannot but hope you will divest your mind of that prejudice which the spirit of prosecution, false and exparte statements and unexplained circumstances has engendered. It was impossible for me at the trials to demonstrate my innocence without calling the other prisoners. In the exercise of your judgement you thought right to deny me the opportunity of doing so. After my trial I entreated to be allowed to submit my Books and papers to the Government and that the detailed declarations of the other prisoners might be separately taken down. Had that earnest prayer been granted my innocence would have been irresistibly apparent. But this too was denied me. In the eye of the law such statements would have been unavailing, nor could I expect, after what has been proved against the other parties, that much reliance would be placed on their assertions, but if they had given detailed and separate statements of all the real facts and circumstances within their knowledge, they would not only have confirmed each other, but would have been corroborated by my Books and papers. I was also most anxious for an opportunity of explaining circumstances which I am told influenced your mind against me, two of which I beg here to allude to - namely that I did not mention Mr. James Freshfield's visit to Bircham, but I sent for Fletcher. Now that I should have sent for Fletcher to require an explanation I submit to you was the most natural thing in the world, and that the manner in which it was done was exactly unlike the conduct of the guilty man. Mr. James Freshfield called on Wednesday about ½ past 5: in the course of the evening I wrote to Fletcher the following note:-

“Dear Sir, I have received a communication from the Bank upon the subject of which I shall be glad to see you. Tomorrow I have a trial coming on but on Saturday you will find me at home. Yours faithfully WH Barber 15th Nov. 1843.”

It is probable that this note has fallen into your hands: if so you will find my copy substantially correct. This as I stated was on a Wednesday. [HO53] Fletcher called on Friday, and he then satisfied my mind that the visit of Mr. Freshfield arose from the mistake in the Bank Books which he had previously named, adding that his friend would see it put to right, and I should hear no more of it. That I should not have spoken of it to Bircham may seem more extraordinary, but it

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<sup>66</sup> HO52-53A.

so happened that from the moment of your brother's visit to the time of Fletcher's call I never saw Bircham, being engaged at a Trial in Red Lion Square the whole of Thursday, and Fletcher so completely out of my mind [##] that I really thought no more about it. Many circumstances which I thought strongly indicative of my innocence, I heard with much astonishment tortured by a cruel abuse of talent to evidence of guilt. But there is one proof of innocence which no prejudice, no perversion of reason can possibly misconstrue. I mean the entire absence of all preparation for my defence. I point this out to your attention because it is a fact which, if not already within your knowledge, may be easily and clearly ascertained. The two things indispensable for my defence were my Books and papers connected with the business, and adequate funds. Both were at my command, but with neither did I provide myself. Not one of the papers in either of the matters had been disturbed, or even referred to from the time your brother called, until they were taken possession of by him. Twenty-four days had elapsed from the day Mr. Freshfield called and told me that a forgery had been committed, and that he should report the case to the Treasury. At this time there was due to me for book debts from various parties at least £1500 -, and to the firm not less than £2000. -, besides which it is well known my own separate credit was good, and that of our house was high. Nothing therefore would have been easier than for me to have set apart several hundred pounds for so vital an object as my defence. But during the whole of this period I never applied for a single book debt, or sought to raise a single pound either upon my own credit, or that of our firm. In one case £330 was due to myself and partner for principal and interest advanced on mortgage. I took no steps to hurry the payment of this money, precious as would have been my moiety of it had I been aware of the fearful accusation that so soon was to be preferred against me. It was received by Mr. Bircham a few days after my apprehension, and I could not obtain a shilling of it for my defence, as he retained it to meet, as he said, the liabilities of the firm. I could easily have saved £1000 to resist the tremendous power that was opened up on me, but when taken, all the money I could command was £30 -, and at hearing after hearing I had to pay Mr. Chambers 5 guineas, and to maintain myself for 4 months in prison. For want of means I was obliged to accept the services of Mr. Parry in lieu of Mr. Chambers; and although the talents of the former gentleman are of a high order, yet I felt the loss of the great experience of the latter severely. From the same cause I lost services of Mr. Gedye, and was compelled to accept the services of a Mr. Bramall, a gentleman who I believe never had a criminal case to conduct before. Still I shall ever be grateful to him for the generous spirit in which he exerted himself to the best of his knowledge and experience, and for the honourable and gentlemanlike manner in which he behaved to me throughout. He was actuated by no other feeling than a desire to extricate a man he firmly believed, nay I may almost say he, from the inspection of my Books and papers, and conferences with me, knew to be innocent. These circumstances I believe are in a great measure known to you, but if not they will be found [HO53A] to be strictly correct upon inquiry. And can you believe that I should thus have left myself defenceless and destitute, had I known the real character of the business to which I had been unconsciously made a party? I know well how irresistibly the noblest legal minds become prejudiced against those whom it is their duty to prosecute, but I was surprised that you should have allowed your mind to be influenced by the secret attacks made up on me by persons whom I happened to have offended in the course of my professional career. A report was circulated far and wide by persons connected with the prosecution, which contributed largely to the prejudice which was cruelly fostered against me. It turned out that this statement had no other authority than a rascally German, and was disproved by the oath of my clerk. It was because I declined continuing professionally engaged for this man that he sought this cowardly revenge. To such mean and vulgar minds, the mournful calamity which has befallen me may be matter of exultation, but by all who know me well, and saw the

laborious, frugal and useful life I led, my tragical fate is deeply deplored. It was your duty doubtless to take all necessary steps for my conviction, and you indeed discharged that duty with consummate skill. You succeeded in obtaining the conviction of a man as innocent as yourself. Those by whom you were instructed sought to make a terrible example, and this eager desire I will take the liberty to say rendered many all ear to the slightest shadow of suspicion against me, and perfectly deaf to facts which all but proved my innocence. I earnestly hope however that this excitement has subsided, and that a fair and dispassionate review of my case will now be taken. With a broken heart, and in the depths [##] I appeal to you from whose magnanimity and [benevolence] I alone [##]. Review fairly, I beseech you, all the circumstances – give [the declarations] of my innocence by all the 4 other prisoners their due weight. I say all because even Mrs. Dorey certainly did declare my innocence when she was first brought to the Compter, and if she has subsequently insinuated the contrary, I ask you to consider which statement is most entitled to credit, that which in the anguish of her mind came spontaneously from her when first in custody, or the studied insinuations she may have afterwards made. But at least three out of the four have declared me guiltless, but above all I ask you to consider the time I had for preparation, the momentous importance of such preparation, and yet not the slightest was made. Not a paper or Book was looked out, or [reserved]; nor a single pound provided.

That these facts may be considered in the spirit of justice, and [candour] by you, and those under whose authority you have acted, I daily pray. If that be done I shall be soon restored to my native country, where the end and object of all my labours was to become a useful member of society, and an honor to my profession, and where I shall never cease to feel and to express my heartfelt gratitude to yourself and those who may generously become the instrument of my deliverance.

I have the honor to remain, Sir,

your most obedient servant

W.H. Barber

## Appendix 31 Statement of John Smith 20 September 1844

### First Statement of John Smith<sup>67</sup>

I was a fellow prisoner with William Sanders after his Trial, and feeling some interest about the case of Mr. Barber (although I had no personal knowledge of him) I asked Sanders if Barber was innocent or guilty.

He solemnly assured me Barber was entirely innocent, that everything was so arranged that Barber could have no reason to suspect any fraud – that Fletcher had always declared to him that Barber had no guilty knowledge whatever, and from the precautions taken by Fletcher, Sanders said he was quite certain the real truth had been carefully concealed from Barber. I had more than one conversation with Fletcher on the subject and he was always consistent in declaring Barber's innocence, adding that neither he, his wife nor Mrs. Dorey were known to Barber except in the fictitious characters in which they were introduced to him by Fletcher.

With regard to myself I may state that I was at one time a member of the Stock Exchange, but having got into pecuniary difficulties I forged the acceptance of my brother (Secretary to the Bishop of Lincoln) for the sum of £5 and the forgery having been discovered I was sentenced to seven years transportation.

Sept. 20<sup>th</sup> 1844

JOHN SMITH

Witness

Chas. Hy. Fuller

Surgeon Superintendent

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<sup>67</sup> HO69, in handwriting of William McCallum. See Barber's other versions, which have added text, at HO238-239 and BB (1853, 9th ed.) 117 (98).

## Appendix 31A Two versions of convict John Smith's deathbed statement

### Version 1 – handwritten by Barber<sup>68</sup>

Further Statement of John Smith

I John Smith a prisoner on board the convict ship “Agincourt” being now on a bed of sickness, from which it is very doubtful if it will please God to raise me, am desirous of stating what has come to my knowledge of the case of William Henry Barber, through my intercourse with William Sanders and Joshua Fletcher. From my former statement it will be seen that I was a fellow prisoner of Sanders's after his trial, I had repeated conversations with him, in reference to which I have only to repeat that Sanders declared in the most positive manner Barbers entire innocence, and that from the circumstances named by Sanders, I am persuaded that the business was introduced to Barber by Fletcher, who appears to have been a regular client, as strictly legitimate and that from the precautions taken there was nothing by which a solicitor would be induced to suspect the contrary. I have been on friendly terms with Fletcher ever since we have been on board the “Agincourt”, and have had several conversations with him about Barber's case, and although there has been an evident hostility between them, he never denied that Barber was entirely innocent. All that I have seen and heard of Barber has convinced me that such is indeed the fact, and as the voyage is now nearly over I have been induced to speak seriously to Fletcher on the subject, and have urged him to enter into a detailed narrative of the circumstances of the case, but his unfriendly feeling towards Barber seems rather to have increased; Barber having, as he says, behaved throughout the voyage in so distant and [uncourteous] a manner to him as to become the subject of general remark; besides which he has complained of Barbers having placed him in the “lions mouth” by bringing him forward when Barber was first apprehended, but for which he says he should have escaped by being evidence for the Crown. He declared therefore that he would neither add to nor detract from what he had already said, and although he admitted the perfect innocence of Barber said he must help himself as he best might. (signed) John Smith

Declared in our presence on board the convict ship Agincourt off Norfolk Island 6 Nov. 1844

Charles Hy Fuller, Surgeon Supt

John L Ison, Minister

### Version 2 – as published

I, John Smith, a prisoner on board the ~~convict~~ ship “Agincourt”; being now on a bed of sickness, from which it is very doubtful if it will please God to raise me, am desirous of stating what has come to my knowledge ~~of in~~ the case of William Henry Barber, through my intercourse with William Sanders and Joshua Fletcher.

From my former statement it will be seen that I was a fellow prisoner of Sanders's after his trial, ~~and I~~ had repeated conversations with him, in reference to which I have only to repeat that Sanders declared in the most positive manner Barber's entire innocence; and ~~that~~ from the circumstances named by Sanders I am persuaded that the business was introduced to Barber by Fletcher, who appears to have been a regular client, as strictly legitimate, and that from the precautions taken there was nothing by which ~~any~~ solicitor would be induced to suspect the contrary. I have been

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<sup>68</sup> HO240-241.

on friendly terms with Fletcher ever since we have been on board the Agincourt, and have had several conversations with him about Barber's case; and although there ~~is, and~~ has been ~~throughout~~, an evident hostility between them, he never denied ~~that~~ Barber was entirely innocent. All that I have seen and heard of Barber has convinced me that such is indeed the fact; and as the voyage is now nearly terminated, I have been induced to speak seriously to Fletcher on the subject, and have urged him to enter into a detailed narrative of the circumstances of the case; but his unfriendly feeling towards Barber seems rather to have increased; Barber having, as he says, behaved throughout the voyage in so distant and uncourteous a manner to him, as to become the subject of general remark;. Besides which, he has complained of Barber's having placed him in the "lion's mouth", by bringing him forward when Barber was first apprehended; but for which, he says, he should have escaped by being evidence for the Crown. He declared, therefore, that he would neither add to nor detract from what he had already said;, and although he admitted the perfect innocence of Barber, said he must help himself as he best might.

JOHN SMITH.

~~Signed and~~ Declared in our presence on board the ~~convict ship~~ Agincourt.

CHARLES HY. FULLER, R.N., Surgeon Superintendent.

JOHN L. ISON, Minister.

Off Norfolk Island, Nov. 6th, 1844.

## Appendix 32 Original Statement of William McCallum, 12 September 1844

### Statement (1)<sup>69</sup>

[For the two other versions of this statement see Appendices 37 and 38]

Statement of William McCallum in reference to the declarations of Joshua Fletcher, with remarks which have occurred to him on reading the report of William Henry Barber's trial; and from subsequent conversations with Joshua Fletcher.

It will be remembered that it was I who received Joshua Fletcher's instructions for the declaration he made showing Mr Barber's entire innocence. An explanation of the circumstances under which this avowal was made may be proper. Having seen Fletcher's statement of the 28th June, I was induced to speak to Barber on the subject, and afterwards to Fletcher; and receiving a strong impression of Barber's innocence, I urged upon Fletcher the duty of making a more detailed statement in explanation of the business. He then gave me the particulars, which I committed to writing: he read my draft with scrupulous attention, and made several corrections. This statement I am quite sure was a bona fide the one, and emanated from no [?concertion<sup>70</sup>] between Barber and Fletcher. From the first moment they met on board Barber has avoided Fletcher as far as their position would admit. He evidently regards him with that abhorrence for which he has had such fatal cause. From the manner in which Fletcher made his statement, I am quite convinced he has done Barber but niggardly justice, and that he might have stated many particulars which would have still more clearly demonstrated his innocence. Indeed he appears to have been constrained to make the statement he did - in other words, ashamed daily to meet the eye of the man he had so previously injured without divulging the truth. The Surgeon Superintendent on board having attentively read the declaration over, said to Fletcher in a serious tone, "Is this true?"] Fletcher replied ["Yes Sir it is quite true". Why then, continued the Superintendent [HO60] did you not declare this at the Trial? Fletcher said I was jointly indicted with him, and had no opportunity of doing so. This detailed statement was made on the 2nd of July last. Since that period I have minutely read over the whole of the report of the trials in the "Times" paper extending over nine days. The mass of matter produced upon this occasion I have studied with an attention very few have probably bestowed upon it; I have also interrogated Barber and Fletcher separately[sic], and at great length, upon all the points connected with the transactions; and I solemnly declare that the result of my labours is a most perfect conviction of Barber's entire innocence. The intense interest which that conviction has awakened in my mind, and my sympathy for his undeserved suffering, would I believe activate with equal force every generous mind who had the same opportunity of learning the real truth which accident has presented to myself. After attentively reading the summing up of Mr Justice Williams, and comparing it most minutely with the evidence, I am struck with amazement at its extraordinary tone and character. Instead of the humane and anxious care which has been shown by judges on such occasions to guard against the possibility of convicting an innocent man; his Lordship's address to the jury is a summary of every point that could be pressed against the accused. They were not reminded of one of [those] numerous features which transpired even from the Prosecutors witnesses which if not wholly incompatible with guilt raised a strong presumption of innocence. Well might Barber's counsel claim to have the jury reminded of his arguments, as well as those urged with such fatal ingenuity by the counsel for the

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<sup>69</sup> HO59-67.

<sup>70</sup> Note Samuel Johnson's definition of 'to concert': To settle any thing in private by mutual communication.

prosecution. The jury were even invited by his Lordship to assume a fact against the Prisoner upon which almost the whole case hinged! I mean that Fletcher communicated truly to Barber Christmas' report that the handwriting agreed with a slight variation only. That communication he never did make but one of a directly contrary character; and not only does Fletcher admit this but it is evident from the subsequent correspondence between Barber & Bircham, and Fletcher. The suggestion of the Judge was the more extraordinary as not a tittle of evidence [HO61] was or could be offered to shew that Fletcher and Barber were friends; or that any more intimate relations existed between them than the ordinary one of Client & Attorney. The assumption thus suggested by the learned Judge was doubtless adopted by the Jury. Most fatal error! Scarcely ever was there a summing up in which the Judge did not remind the Jury that it was their duty to give the prisoner the benefit of any doubt. That direction, as just as it is humane is wholly omitted in this case, yet never was there one in which such a direction would have been more appropriate. In the preceding Trial the learned Attorney General said that if he considered it necessary to go over the evidence for the prosecution in his reply, the Prisoner would be entitled to an acquittal. Now if the opinion of this eminent and experienced lawyer, the present Chief Baron of the Court of Exchequer was correct, then Barber ought to have been acquitted in Slack's case; for the learned Counsel went through and through the evidence, and pressed it to the utmost of his great abilities. There was not one iota of that forbearance which Sir Frederick Pollock declared ought to be shown in so unequal a context, as that of an individual struggling not for his life indeed, but for that which was infinitely more dear to him, his character, station, and liberty, against a Government whose resources were lavishly bestowed to secure a conviction; only rendered difficult by the absence of any real evidence of guilt. Not only was no forbearance shewn in this case, but the right of reply, possessed in Crown prosecutions alone when no witnesses except to character are called for the prisoner, was unsparingly exercised. Had this been a private prosecution Mr Erle would not have been entitled to address one syllable to the Jury in reply. Not a word was uttered by the learned Judge to guard against the undue effect of this privilege - one which, I humbly think, is wholly irreconcilable to fair and equal justice. And after all, it was not without an hour and a half doubt and hesitation that the jury pronounced this adverse and unhappy verdict. To form a correct view of this case, the whole of the evidence with the reasoning on both sides should be read. Let anyone - nay let the learned Judge himself do this, and the adverse and unilateral character of the charge will be undeniable. That his Lordship had an impression of Barber's guilt is evident, but it is no less evident that such impression arose from the unfortunate and erroneous assumption that Fletcher unreservedly communicated to Barber all he knew. This however was far from the truth. [HO62] Barber never even knew the name of Fletcher's informant at the Bank, and Fletcher only communicated to Barber just as much as would answer his own dark purposes. The learned judge considers that Miss Slack of Abbotts Langley answered the description of the owner of the Stock, and that Barber knew it.<sup>71</sup> [?True] undoubtedly if the report upon the handwriting sworn to by Christmas the Bank Clerk had been correctly communicated to Barber, it would have raised a strong presumption in favour of her identity, notwithstanding the disparity in her age; but Fletcher declares that he reported to Barber that the handwriting was wholly dissimilar from that of the owner of the Stock in the Bank Books; and that he also told Barber that such owner had executed a Power of Attorney 12 years before. Capt. Foskett admits that he might have stated the age of Miss Slack to Barber as about 27; she therefore would have been only 15 years of age when the

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<sup>71</sup> Not sure this is accurate. Judge said 'It was for them [the jury] to consider whether from these descriptions, which agreed entirely with the description of the Anne Slack in whose name the £3500 were lying in the Bank, Barber might be supposed to have a knowledge, at the time he obtained probate of the will, that the real Anne Slack was at that time living, and that consequently the will could not be hers.'



Power was executed, and as Minor legally incompetent to have signed such a document. The alledged [sic] total dissimilarity in the handwriting, and the very great, I might say the fatal inaccuracy of Capt. Foskett as to the age of his sister-in-law led Barber to the firm belief that in her he had not found the true owner of the Stock. Barber had I am sure implicit confidence in Fletcher's integrity and veracity, but even had he viewed him with suspicion, he would hardly have suspected any deception in his report on the handwriting, as it seemed to be contrary to his own interest; Barber conceiving that Fletcher hoped to find in Miss Slack the real owner of the Stock, and that he might through Barber's negotiation get a handsome remuneration for his trouble. This had been done in several previous instances, and from my conferences with Fletcher, sure I am that Barber never could have suspected any other design in this case. Fletcher affected to regret the failure of the negotiations with Capt. Foskett, and expressed his determination to discover the real owner if possible. For two months and upwards he pretended to be engaged in that object, as is shown by his correspondence with Barber & Bircham. Having succeeded, as he represented to Barber, he introduced Mrs Sanders as Emma Slack. Barber made many enquiries of her which were reasonably and plausibly answered. A genuine certificate of the death of the assumed Testatrix was produced to him[,] the handwriting of the Will was no imitation of Miss Slack's of Abbot's Langley but that of an old lady to correspond with the age (68) mentioned in the certificate. Every possible precaution was taken to prevent Barber's detecting the impositions. There was not a circumstance to create suspicion: Miss Slack of Abbott's Langley he had been quite satisfied was not the party, and Fletcher appeared to have no interest in introducing Emma Slack, as she required not his information, the property being identified in the Will. He introduced her to the house [HO63] as a new client, and claimed the credit of conferring a favour on Barber in doing so. But it appears to have been said that Barber being an attorney, and having some repute for his intelligence and acumen, could hardly have been deceived. From my own intercourse with him I should say he was not likely to be deceived except by one who had previously gained his confidence. Fletcher he had known professionally for several years as an independent man, and as he had every reason to believe an honourable one. The conviction which I have arrived at of Barber's innocence, and the particulars which I have set forth are not the result of a simple statement of Fletcher's, but of many conversations I have had with him in sickness, and in health. I would beg leave to advert to one feature in the case to which my attention has been particularly drawn by an observation of the late Mr Justice Parke in summing up an important case. His Lordship is reported to have said "The moment when the safety of persons confederated in vice becomes endangered they forget their apparent friendships, and resort to disclosures for their own security.["] The result of the learned Judge's experience accords with common sense and fair reasoning:- let any one impartial mind apply this to Barber's case. Three weeks before his apprehension Mr Freshfield called and told him that a Forgery had been committed. Barber produced his books and papers connected with the business and communicated all he knew respecting the Executrix, withholding nothing but the name of Fletcher who introduced her to the office. This he declined at that moment to give up. Now had he possessed a guilty knowledge of this serious crime would he not have seen that the time was come to secure his own safety by becoming that witness? Many circumstances which transpired at the Trial appear to me quite irreconcilable with the conduct of a guilty man, but I advert to this because it raises the strongest possible presumption of innocence. It may be proper to explain the grounds upon which Barber founded his belief that Mr Freshfield was in error. Fletcher had satisfied Barber's mind that the Miss Slack of Abbott's Langley and the owner of the £3,500 stock were distinct persons. When the transfer was made to the pretended Executrix he acquainted to Barber that the Bank had erroneously entered Miss Slack of Abbott's Langley "deceased" in their Books as well as the

Testatrix; so that when the former went to receive her Dividends in October there would be some confusion or difficulty. The visit therefore of Mr Freshfield Barber naturally thought arose out of the mistake which Fletcher had represented. This was the pit which Fletcher had evidently dug for poor Barber's destruction. But for this representation there can be little doubt that Barber would have viewed Mr Freshfield's examination in a very different light. From [HO64] the knowledge I have acquired of the case, it seems to me a matter of deep regret that Barber's Books and Papers were not all produced in his defence, [?] to his own intentions. His eloquent counsel, however, appears to have relied with perfect confidence on an acquittal without their production; and it is possible that some objection may have been offered to the admissibility of such documents in evidence for the accused: but surely his earnest entreaty after his Trial, to be allowed personally to submit to them to the prosecutors, and to explain every circumstance of suspicion that had been, or could be raised against him, ought to have been granted. Believing as I am bound to be, that those who conducted that prosecution sought but to punish the guilty, I am quite sure they would then have paused before consigning him to misery and disgrace. But if his innocence be not clearly proved by what has transpired since the Trial, surely the most prejudiced person must feel that a strong presumption of it has already been created, and that a case is established for the immediate interposition of the Crown. If at this moment he were restored to liberty, he has sustained a fearful amount of punishment for what was, after all, but his inflexible fidelity in not disclosing the name of a client of whose respectability and integrity he had no reason to doubt. This refusal, or rather delay beyond all question brought the whole of this overwhelming prosecution upon him, although it has been most emphatically declared by a late Lord Chancellor - I mean Lord Brougham - that the first and highest duty of an attorney was the protection of his clients interests, and the preservation under all circumstances of his confidence inviolate. Convinced I am that the time will come when Barber's innocence will be universally acknowledged but Heaven forbid that justice should be withheld until every faculty of his mind and body shall have been exhausted by sorrow and suffering - let it not be said that even if strong doubts do exist it is not an isolated case, that there are others possessing equal claims to consideration upon similar grounds. From what I have gathered of the cases of the 220 Convicts on board I may confidently assert that with very rare exceptions the justice of the verdicts against them are freely admitted, and in a few instances where this is denied the present condition and prospect of the parties are [?rarely], if at all, inferior to those which they formerly ~~possessed~~ enjoyed. Transportation which is doubtless intended as an equal punishment is perhaps the most unequal that could possibly be conceived. The terrible disparity of the infliction is illustrated in Barber's case with a painful and cruel severity such as can be known only by one like myself am in daily and nightly [HO65] witness of it. If any doubt remains of the perfect innocence of this most unfortunate man after the unqualified declaration of Fletcher, it must arise from a suspicion that such declaration was a concocted falsehood. That Fletcher should for Barber's benefit entirely acquit him and thereby take the whole guilt upon himself is alien to his nature and a monstrous improbability. Fletcher even yet clings to the hope that the offer which he made to the Government before the Trial to unravel the entire plot, and to expose other parties who are really guilty will be listened to, and that this may lead to a mitigation of his sentence. It would ill advance these [?views] to admit that he has abused the confidence of an innocent and honourable man, and dragged him from his position of respect, and happiness, to the deepest degradation, and to misery greater, far greater than his own: for daily observation convinces me that punishment, especially transportation, falls with tenfold severity upon an innocent man. Fletcher is resigned to a fate which he must have anticipated; all his arrangements for himself and family having previously been made he was prepared for it, and now, although

occasionally ill, he is when in health one of the most cheerful and colloquial<sup>72</sup> persons on board. Not so with Barber however, he was stricken to the earth as with a blast of lightning by the terrible and unexpected verdict which banished him from the circle in which I am sure, and can well believe, he was highly esteemed. From this blow he has never recovered. The hope which alone sustains him is that his august and all powerful prosecutors may yet be induced to take a dispassionate view of his case and magnanimously admit his innocence. Before the Trial, at the trial, and since the trial, in fact from the moment that Fletcher appeared to Barber in his true colors, he assumed a hostile position towards him, and never concealed the feelings of scorn and indignation with which he had so much reason to regard him. No friendly feeling therefore actuated Fletcher in making his Declaration, still less was it the result of any concert or concretion<sup>73</sup> between them. Unless it be supposed that Fletcher to his own prejudice would falsely exculpate a man who regards him with undisguised abhorrence then the innocence of Barber must be admitted by all the world. Surely then the prosecutors will be induced to arrest the progress of this fearful tragedy. A strong prima facie case was undoubtedly made out although not a fact [HO66] was proved incompatible with his innocence. The other parties ~~alone~~ accused could alone explain the whole circumstances, and prove his innocence to demonstration. These he in vain sought to place in the witness box. Sanders, his wife, and Fletcher - who must have known had he been guilty, and who could derive no advantage from falsehood have all separately and unequivocally declared him guiltless. As it may be inquired who and what am I make this communication it may be necessary to state that I lately had a confidential situation in an eminent Mercantile ~~xx~~ house in Glasgow, and having unfortunately entered into commercial speculations on my own account, and beyond my means, I, to raise the necessary capital, forged bills of exchange to a considerable amount, hoping that I should be able to meet them as they fell due. The forgeries were discovered. I at once surrendered myself to justice, made every restitution in my power by giving up all my property, and ~~having~~ pleading guilty on trial was sentenced to transportation. Yet as I conceive that there are many extenuating circumstances in my case I venture to hope that Government; taking into account my previous [inexceptionable] character, if supported by good conduct for the future may be induced to commute my own sentence. These hopes would be ill [?] by any false representation which is designed for the consideration of Government. I have with great pains endeavoured to elicit the truth from Fletcher; this I have faithfully narrated. I have done so in the full assurance that those in whose hands is placed the unfortunate Mr Barber's fate only require reasonable ~~evidence~~ satisfaction of his innocence to rescue him from his present cruel position. Abundantly, most abundantly will my humble efforts be repaid if they tend to promote the ends of truth and justice. If information as to myself be sought for, I may humbly, but I trust confidently, refer to the Criminal department at the Home Office or the authorities of Millbank Prison.

Barber tells me that he has but little interest in high quarters to press his case upon the consideration of the prosecution, but I trust that the claims of suffering innocence will be heard by a paternal Government unaided though they ~~be~~ were by a single voice beyond that of the deeply injured suppliant himself. For my own part when I daily see him, possessing, as he does, an enlightened and [honorable] mind, with a most amiable disposition, [crowded] [67] amongst Burglars, Highwaymen, and those convicted criminals of the most depraved and brutal character, my heart bleeds for him. I ~~take~~ call God to witness that the only motive which has actuated me in the trouble I have taken is the extrication (as far as my humble efforts may tend to do so) of an innocent man from disgrace and ~~punishment~~ suffering, as terrible as it is unmerited. It is not for

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<sup>72</sup> Meaning conversational at the time.

<sup>73</sup> [Johnson's Dictionary Online \(johnsonsdictionaryonline.org\)](http://johnsonsdictionaryonline.org) 'CONCRETION. 1. The act of concreting; coalition.'

me to make any disparaging remarks as to Fletcher, but to see Barber who has never had one shilling of the [?] plunder, who has been quite as much an innocent professional instrument as the Proctor, or the Broker, driven from his high and honorable position, of his bright prospects blasted, and the labours of five and twenty years destroyed, involved in one common fate with a man who for years prior to his employing Barber was realizing his thousands by his nefarious and subtle traffick, through the instrumentality of another solicitor who appears to have been equally unsuspecting of fraud – to see such a calamitous and lamentable infliction of punishment must surely kindle in his behalf not only a powerful, but an active sympathy.

That the God of Truth and justice may speedily influence the hearts and minds of those in whose temporal power this unfortunate man is placed, to terminate his unmerited sufferings is my daily and most fervent prayer.

On board the Convict Ship Agincourt )

London to Norfolk Island ) William McCallum

Chas. Henry Fuller Esq – Surgeon [?] )

Superintendent )

20<sup>th</sup> Sept 1844

Simon's Bay, Cape of Good Hope

## Appendix 33 Original Memorial from Norfolk Island, December 1844

### Original Handwritten Version<sup>74</sup>

To the Right Honorable Sir James George Robert Graham, Bart., Her Majesty's Principal Secretary of State for the Home Department

Whitehall, London

SIR,—I once more crave leave to address to you my humble petition. It is scarcely necessary to remind you that I am the Solicitor who was convicted on a charge of uttering a will of one Anne Slack, “knowing the same to be a Forgery”.

Of such guilty knowledge, as of all participation in or criminal connection with the fraud effected by such forgery, I most solemnly declare to you, Sir, I am wholly innocent.

Whilst in Millbank Prison, I had the honor to transmit to you a Memorial, embodying the circumstances of my unfortunate case; but, from the distracted state of my mind at that period, the statement was, I fear, exceedingly imperfect. Permit me, therefore, now to submit a narrative, which I trust will be found to embrace every material feature, and to which, as well as to the subjoined declarations and confessions made since my Trial, I humbly but most earnestly entreat the favor of your patient attention.

I was articled to those eminent and most respectable Solicitors, Messrs. Scoones, of Tonbridge, Kent, with whom I continued nearly seventeen years, when I left to practise on my own account, having received from them a highly commendatory testimonial. After a few months' residence in Brighton, devoted to study and preparation, I, in 1837, established myself in London. About 18 months afterwards, Fletcher called at my office and introduced himself as a capitalist, inquiring into the validity of a claim which a client of mine had preferred to a portion of the “Angell Estates”, and who had applied to him to advance the necessary funds.

I told him I thought the case was hopeless, and dissuaded him from the contemplated loan. Upon inquiry, I learnt that he was a retired Surgeon, and that he was living in a house of his own, besides, possessing of considerable houseproperty [?], and surrounded [HO204] by every appearance of affluence and respectability.

A few months afterwards, he consulted me upon a dispute with one of his tenants, and from that time to the moment of my apprehension, I continued to be his ordinary Solicitor. His business consisted of the preparation of agreements with, and the adjustment of differences between him and his tenants; and the investment of his capital. In deportment and manners, he was somewhat reserved, but extremely decorous and gentlemanlike.

When I had been concerned for him about a year, he introduced to me a Miss Stewart as a client. She was a very old and infirm, but respectable looking person; and represented herself as the sister of one John Stewart, who had died leaving some money in the funds. Administration had been applied for, but finding the aid of a solicitor necessary, Fletcher introduced her to me. The commons being satisfied, administration was granted, and she obtained the fund. About this period, Fletcher told me that he had the means of obtaining information at the Bank as to the amount of Stock and Dividends unclaimed, and that he devoted a portion of his time to tracing out the owners, with a view to a liberal remuneration for his trouble. But, in order to secure such remuneration, an agreement was necessary, which he should sometimes employ me to prepare. I

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<sup>74</sup> HO203-236.

continued his solicitor about five years, in the course of which he, in various instances, traced out the true owners of this kind of property, and through my professional instrumentality placed them in possession of it. During this period, however, he introduced, at intervals of about a year, four persons, who claimed, and, by means of false personations, procured a large amount of property, to which they had not a shadow of a claim.

These cases were brought into the office precisely in the same way as the genuine ones; and as appearances were preserved, and every precaution taken with consummate subtlety: and, above all, as I placed implicit reliance on Fletcher's integrity, not the slightest suspicion of fraud ever occurred to my mind. In speaking and writing to me about them, Fletcher affected to treat them as the most ordinary and legitimate business: frequently writing a long letter on different subjects of his own, and genuine Bank cases, and in the same communication referring to and giving me directions in these fraudulent transactions. The first fraud was Stewart's; the second was a case of Burchard's; the third, Hunt's; and the fourth, Slack's. It was in the [HO205] last that detection occurred, and which led to the discovery of the other most subtle and abominable robberies. The circumstances of Slack's case are as remarkable, as the means adopted were crafty and iniquitous. They require far more attention than I believe has ever yet been paid to them, in order truly to understand the part which I have taken, and the means by which my faith and confidence were obtained, and whereby I was so effectually and fatally misled. I will state them as perspicuously as my enfeebled energies and impaired health will permit.

In the autumn of 1842, I first received Fletcher's instructions in this matter. He said there was a sum of £3,500 Stock in the name of "Anne Slack, of Smith Street, Chelsea, Spinster" - that he had ascertained there was a lady of the same name living with Capt. Foskett, of Abbott's Langley, and he requested me to communicate with the Captain, to ascertain whether she was the party, and if so, if she was aware of her rights; but on no account to disclose the nature of the property without his express authority. Hence the correspondence of myself and partner with that gentleman, and my subsequent interviews with him and his Solicitor. In the course of this negotiation, I learned that the lady had once lodged in "Smith Street, Chelsea". This circumstance raised a strong presumption in favour of her identity; but, unfortunately for me the statement as to the residence was accompanied with another, which raised a much stronger presumption that she was not the party; namely, her age. The captain, either from some delicacy about the age of an unmarried lady, or some other motive, and notably not knowing what bearing it had upon the case, represented her age as 27 whilst in point of fact, she was six, or seven and thirty. I made some other inquiries of the Captain, but without eliciting any fact which raised a presumption of his Sister-in-law's identity, except that she had once resided in "Smith St". The particulars I had so collected, I reported to Fletcher, especially the two facts as to the residence and age. He said it was hardly possible that she could be the party, as the owner of the Stock had executed a power of attorney 12 years before, which Miss Slack, of Abbott's Langley, could not then have done, she being then a minor. But," said he, "if you can obtain her handwriting, I will have it compared with the signature in the Bank, which will effectually determine the question."\* I accordingly applied to Capt. Foskett for it, and his Solicitor, Mr Baxter, subsequently brought me a letter written by the young lady. This I sent to Fletcher by letter, for comparison. It was in this part of the transaction where Fletcher grossly deceived me. He brought the letter back in a few days, [HO206] stating that, "it was now quite clear that this lady was not the party entitled, as the owner of the stock wrote a large stiff hand, like an elderly person, thus, "Anne Slack," whilst this lady wrote the usual fine running hand of a young lady; and that Miss Slack, of Abbott's Langley, held a sum of £6,000 Stock, but that the signature to that and the £3,500 were totally dissimilar;-in fact, that the writing of this young lady was as unlike the writing of the owner of the unclaimed stock, as ordinary writing was unlike print." At the same time that he made this report, he handed me what he said was an extract from the letter of his friend at the Bank, (but without showing me the letter itself) which confirmed his report.

I therefore arrived at the conclusion that although it undoubtedly was a remarkable coincidence that two ladies of the same name, and both holding Bank Stock, should have resided in the same street, yet that considering the age of Miss Slack of Abbott's Langley, and her handwriting, that the owner of the Stock was quite a different party; and a letter was written to Mr Baxter by our firm to that effect, and returning his client's letter. I remarked to Fletcher on the singular coincidence of two separate holders of stock of one name, and who had resided in the same street. He said, "it was not so very extraordinary, as Smith Street was one in which many persons lived for

\* see my correspondence shown in my Millbank Memorial + in the "Times" of 23 Apr. 1844.

a season only, and then removed and Slack was by no means so uncommon a name as I supposed, there being a great many in the Bank Books." I most implicitly believed Fletcher, not only from the confidence I had in him, but because I was in some measure prepared for a result unfavorable to the lady's identity, from the previous statement of Capt. Foskett as to her age. Moreover, I believed that Fletcher was, as he affected to be, chagrined and disappointed, that after so much trouble, he had failed to discover the true owner.

My partner and I talked over this business as of the other matters in the office, and particularly the result of this inquiry, and we both thought that the presumption which had been raised in Miss Slack's favor by the fact of former residence merely, was completely rebutted by the apparently conclusive facts as to age and writing. All idea, therefore, of this lady being the [HO207] party entitled was wholly dismissed from both our minds.

Fletcher expressed himself exceedingly disappointed, but said he should resume his inquiries for the right party. A few days afterwards, he wrote us a letter, expressing his intention of going to Bath, as he had reason to suppose, from the death of a lady of the name there, that the owner might be heard of in that quarter.

After his return, he called, in my absence at our office, and left a copy of the "Bath and Cheltenham Gazette," in which he had inserted an advertisement for the representatives of "Anne Slack, formerly of Smith Street, Chelsea"; and referring parties to Barber and Bircham. In answer to this advertisement we received a letter from a "Jane Slack" of Bath, stating that she was\* the niece of Anne Slack, and pretending to have a claim. This we answered. Shortly afterwards we received a further letter, in which the writer stated that she was satisfied she could not be the party inquired for. Upon a careful consideration of this correspondence after my apprehension, a suspicion arose in my mind that it was fictitious, and my solicitor accordingly went to Bath and inquired for the writer. He then discovered that she was no other than the identical Emma Slack! and that she

\* See correspondence

had taken lodgings merely to have our answers to her letters received there. The villanous subtlety of Fletcher thus became evident. Instead of "Bath" being the object of his journey, it was Bristol, the residence of Sanders and his wife, where the remainder of the plot, and the details by which my eyes were to be blinded, were doubtless arranged. If you, Sir, will take the trouble to refer to the "Times," of the 23rd April 1844, containing my address to the Court, or to my Memorial addressed to you from Millbank, it will be seen that the letters of this pretended Jane Slack were regularly sent to Fletcher, and at the same time he affected to me to have no knowledge of her whatever. One of the numerous and extraordinary unfortunate circumstances to which I became the victim, was the illness of my Solicitor at the time of my Trial, whereby I not only lost his important services, but his evidence of the result of his inquiries at Bath. From Sanders' information since the trial, it appears, that he had, by agreement with Fletcher, registered the death of one Anne Slack, at Bath, some time before the taking of the lodgings there, but when a

certificate was applied for, there appeared to have been an error in the entry, and that Fletcher and he then determined to register a death at Pimlico, which accounts for Jane Slack's somewhat abruptly breaking off her correspondence with our firm. From the middle of January, when [HO208] the communications with Capt. Foskett terminated, to the early part of March, Fletcher affected to be exerting himself to trace out the true owner of the Stock. It was then I suggested that an advertisement in the "Times" might produce the party. He assented to this, and one of our clerks [\*Macnamara] prepared such an advertisement and got it inserted in the "Times". Several persons applied in consequence, but Miss Slack's (of Abbott's Langley) friends took no notice of it. A letter was, however, sent us by a Mr. Offley, intimating that there was a lady at Abbott's Langley of the name. Mr. Bircham wrote in reply, that we had ascertained she was not entitled. A few days afterwards, i.e. on the 15th, Fletcher called, and said, that after failing in all his previous exertions, he had at last met with the real owner by the merest accident. He said, that whilst superintending some repairs of a house he had recently purchased at Westminster (the conveyance of which we had prepared), he got into conversation with one of the workmen, and finding that he was a Chelsea man, he inquired if he knew anybody of the name of Slack there; that the man then referred him to a house at Chelsea; that upon inquiry there he was referred to No. 7, Francis-street, Tottenham Court Road, where he found a highly respectable woman, who was niece of the owner of the Stock. He said he was quite satisfied of the identity of her aunt, as he had procured a facsimile of the Signature to the will, and had it compared with the Bank Books, and they tallied exactly. I congratulated him upon the lucky manner in which he had met with the owner; but he said, with a shrug of well-feigned disappointment, "Yes, but I shall gain nothing by it, as she does not require my information." I said she may not know her right to this particular stock. "Oh, yes she does," said he, "for it is specifically named in the will." "But," said he, "she does not appear to be particularly connected with a Solicitor, and I will recommend your firm to her." I thanked him; and the next morning he introduced her as Miss Slack. She was dressed in black, and was very respectable in appearance. She produced the will, and I particularly noticed that the signature exactly corresponded with the description Fletcher had originally given me of that in the Bank books, namely, "Anne Slack," like an old lady's, [HO211<sup>75</sup>] the very opposite of Miss Slack's, of Abbott's Langley. At the same time she produced an official copy of the registration of her aunt's death at Pimlico, by which it appeared she had died in the previous February, of Gout in the Stomach, at the age of 68. I made some inquiries about the deceased, which this arch imposter answered with great readiness. She said she should have proved the will before, but she had been ill, which statement seemed quite borne out by her delicate appearance. She was studiously disguised, wearing light hair (her natural hair being black), and complained of Gout in her hands and feet, so that she could not walk without difficulty. From the precision of dress and stiffness of her air and manners she had all the appearance of an unmarried lady – in which character she represented herself – of about five-and-thirty. She professed to treat my services as rather superfluous, observing that it "she understood it was rather Proctor's business." I said "it certainly was, and that the aid of an attorney was not absolutely necessary". Fletcher then said, that "as the Dividends of the £3,500 had been transferred to the Commissioners for the Reduction of the National Debt, he would recommend her to avail herself of my professional assistance.

She asked what our charges would probably amount to? I said, about £10. She said if they were not likely to exceed that, she would be glad if I would attend to the matter for her, as she was not accustomed to business. I told her she would have to advance the Probate Duty, which would

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<sup>75</sup> Out of order on Home Office file.



amount to £80. She said she was not immediately prepared with this, but had no doubt she could borrow it. Fletcher then said, that as the business would now be in my hands, and I was his Solicitor, he would advance it, if she would authorize me to retain the money for him, to which she consented. This he accordingly did. I then accompanied her to Doctors' Commons, when she proved the will in the usual way. The will was attentively examined by our Proctor, who administered the customary oath, without making any remark upon it. I remember saying to Fletcher, he might as well accompany us to Doctors' Commons, but he said that as his presence was not required, he must attend to some business of his own. After the will was proved, the sham Executrix took a Cab, directing the driver to conduct her to No. 7, Francis-street. Upon receipt of the Probate from our Proctor, Mr. Bircham prepared the application to the Bank for the Stock. This being signed by the pretended executrix, he lodged it, with [HO212] the Probate at the Bank; and, after several inquiries, sometimes made by himself, and sometimes by a Clerk, he learnt that the stock had been retransferred into the name of the Executrix. He accordingly wrote to her to that effect, and at the same time Fletcher. Whilst this part of the business was in progress, I was much engrossed by the business of the Spring Assizes, and was absent on the Home Circuit about 10 days, during which Bircham superintended the business. On my return I found that Fletcher and the pretended Miss Slack (Mrs Sanders) had severally called at the office, complaining of delay. Accordingly, upon learning from Bircham that the matter was ready for settlement, I directed a clerk to make an appointment for Miss Slack to attend and settle, and with Fletcher to attend and receive his £80. On the 7th of April, she accordingly came, and I accompanied her to the Bank. After passing through the usual routine, and her signing all the necessary Books, she received the Stock and Dividends, amounting to about £4,600. In the course of this, a circumstance occurred which I think you, Sir, will allow was most unfairly pressed against me to prejudice the jury, namely, that £600 of the fund was obtained in gold, and that it was delivered to me. The simple fact was that being with the Executrix, and she having, or professing to have, the Gout in her hands, I carried this weight of gold for her till she got to a cab. Fletcher met us in the Rotunda of the Bank, and afterwards attended our office to receive his £80. When this was done, she paid him £5 for the use of it, and his trouble, which he received with a well feigned expression of dissatisfaction. Our Law Bill was £13, for which she handed me £15. All the money the £4,600 was counted over, and she signed the usual receipt for the whole amount, in a cash account entered in the Office Ledger. In signing her assumed name of Emma Slack, she appeared to have great difficulty in writing, but which it has since occurred to me was probably affected, lest I should recognize the writing of the "Jane Slack" of Bath.<sup>76</sup> This being settled, and Fletcher having offered to accompany her to a cab, they left our office, the Executrix having the funds in a bag, and from that moment I never saw or heard of her until some time after my apprehension, when I was told that she was a Mrs. Sanders, a name that was never breathed by Fletcher or herself during the whole of the negotiation. [9] [MISSING, so following is the text from BB]

I think, Sir, you will perceive how easily any solicitor might be deceived by such conduct as I have described, especially placing, as I did, implicit reliance on Fletcher's integrity. Throughout the transaction, Fletcher affected much mortification that he should have lost the benefit of communicating the secret of the unclaimed stock to the proprietor. He had ample means of obtaining confidential information from the Bank, and in the course of this business he called and told my partner, and afterwards myself (as appears from our respective diaries), that the Bank had in error entered the two Miss Slacks "deceased" in their books—i.e., Miss Slack, of Abbott's Langley, who was the owner of the £6,000 stock, and the old lady of Pimlico, Emma Slack's aunt,

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<sup>76</sup> The Jane Slack letter was written by William Sanders.

so that when the former went to receive her dividends, she would find herself so entered, and some difficulty or confusion might arise. I observed to him, as our knowledge of this error is only through you, we cannot set them right. "Oh, no," said he, "my friend will see to that; I am surprised they should have made both parties "deceased," even though they consider them to be one, it is not their usual practice." Whether he endeavoured to get Christmas to alter the books and failed, or whether Christmas promised to do so, and either forgot it or found it impracticable, I have no means of judging; but, unless he supposed the books to have been altered by Christmas, he must certainly have been in great anxiety—seeing that the Bank had, contrary to his expectations, made Captain Foskett's sister-in-law "deceased." From his admission to Smith, and his whole conduct, it is now evident that he calculated, that if the fraud were detected (and which it was almost certain to be), he should escape by becoming "*evidence for the Crown*," as he had throughout acted with extreme caution, and had studiously avoided any overt act. This caution, though very apparent upon a review of his conduct, did not particularly strike me at the time, as there was no necessity for his attending at Doctors' Commons, or before the authorities at the Bank; and there was a very good reason, or rather plausible pretext, assigned for some precaution, namely, that his appearing in Bank matters might lead to the disclosure of his connection with his friend there. He was equally reserved and guarded in Robins, Smith's, and other genuine cases.

After the settlement on the 7th of April, the business had entirely passed from my mind, until the 15th of November following, when Mr. James Freshfield called and inquired about it. I immediately showed him all the papers, and gave him every information I possessed, except the name of the client who had introduced the executrix. I told him that I was under a strong impression that his inquiry arose from some error in the Bank books, and therefore declined to furnish the name of a client who might be exposed to annoyance erroneously: [HO213] At the same time I said if he would communicate with me again in a day or two, I might feel at liberty to give the information he pressed for. He then left, and I wrote Fletcher a letter, of which I think the following is a literal copy:\*—

"15th Novr, -43.

(Wednesday.)

"Dear Sir, - I have received a communication from the Bank, in reference to which I shall be glad to see you. Tomorrow I have a cause to try, but on Saturday if you will call,

I shall be at the office.—Your's [sic] faithfully, -

"W. H. BARBER."

He came on Friday, when I acquainted him with the particulars of Mr. Freshfield's visit. He said, "You ought not to be surprised at that, after my having apprised you of the mistake which had been made in the Bank books—the inquiry is precisely what I expected; but the error will be put right, and you will hear no more of it." I said I had "no doubt that it was so, but it would be satisfactory to know that the mistake had been found out and corrected, and I will ask Mr. Freshfield if it has been done." He, however, dissuaded me from this, observing, "It will only afford him another opportunity of probing you, to learn, if possible, from whom the information was originally obtained about the Stock; but I know all that is doing in the Bank as well as Mr. Freshfield does, and that the error will be soon corrected and you will hear no more of it." I certainly felt no anxiety, believing that if the mistake (which I firmly believed had been made) were not corrected, that further inquiry would be made by Mr. Freshfield or the Authorities at the

Treasury. Unfortunately, no further inquiry was made, and becoming engrossed with the multifarious concerns in the office, the matter quite passed from my recollection until the 9th of December (24 days after Mr. Freshfield's visit), when I was apprehended, and taken to the Mansion House direct. I was there searched; my pocket book and other papers, with the keys of my office desks and drawers, were taken from me. I wrote notes to my partner and managing Clerk which I delivered to Forrester. I was kept a close prisoner at the Mansion House from ½ past 9 till until ½ past 1 o'clock, and notwithstanding my request to be allowed to send again for my Partner or for Counsel it was refused. About ½ past one, Forrester returned with my partner and managing Clerk; the notes having been retained until my office had been thoroughly ransacked. Bircham, knowing all about the business, naturally expressed his astonishment at the position in [HO214] which I was placed, observing, "if you are guilty, I am guilty"; "but of course you will soon be discharged; Fletcher will at once explain it." We then determined he should instantly fetch Fletcher. He had no sooner left for this purpose than I was taken before the Lord Mayor, without Counsel or any assistance, although Mr. Clarkson, Mr. Freshfield, his clerks, and a body of witnesses, were all arrayed for the prepared attack. Mr. Clarkson suggested that I should be remanded without examination, till Thursday, but as I must remain in custody meanwhile, which would very seriously have prejudiced my Clients, and conceiving that no case could possibly be made out to justify my detention for a single hour, I preferred that the case should be gone into, unaided though I was. In the course of the examination, Bircham arrived in the room with Fletcher, and I then retired with the former, and conferred on the propriety of calling the latter, when we determined that, however unpleasant it might be for him to be so suddenly placed under examination; yet, that as he was the only person who could explain the business, he must be called. We then beckoned to Fletcher, who was standing at some distance. We told him that he must really explain the matter. He said, "I shall be pressed to divulge the name of my informant at the Bank." I replied, "I conceive that you are not bound to do that." He then said, "Will you protect me if I am asked the question?" I replied, "I will certainly submit that it is a question you are not bound to answer. [sic] He then said, "had I not better account for my connection with the party by meeting at the Bank"? I said, "by no means; on the contrary, state the precise truth in every particular." He again urged, that he was afraid they would press him as to his informant at the Bank, and suggested that before he appeared as a witness we ought to have some [59] further conference. I replied with some warmth at his hesitation, "Even if they do I cannot help it, you know how you accounted to me for meeting with Emma Slack, and I have no alternative but calling you - my detention for 24 hours in custody would do me incalculable mischief. Refuse, if you please, to disclose your friend's name, but, for God's sake, don't build up a particle of fiction." My partner also urged him in a similar manner, observing that he was in duty bound to state what he knew - after the serious aspect which the matter had assumed, and that such information must at once produce my discharge. I then immediately called him before the Lord Mayor. I have stated this with some particularity as the prosecution, with that exquisite skill (but as I humbly think not with [HO215] equal fairness) which has characterized the entire prosecution against me, proved the fact of my being in conference with Fletcher for some little time prior to calling him as a witness, suppressing the fact of this being in the presence of my partner; and without putting in Fletcher's deposition, which, however prejudicial to himself, showed the deception he had practised upon me.

I have now, Sir, narrated as perspicuously as my enfeebled energies will enable me (for I am now in the Hospital) the entire history of this to me most melancholy business. In the absence of all my books and papers, I can only rely upon my memory for dates and other particulars, but I believe that no material inaccuracy will be found. As the perusal of the naked detail upon which I have entered will of itself occupy a sufficient portion of your invaluable time, I could have wished to stop here, and leave you to draw your own conclusions, aided by the Confessions, Declarations, and Certificates appended hereto. There are however some points upon which I feel constrained to address to you a few observations.

It has been said that if innocent, I have at least betrayed “gross negligence” in not detecting the fraudulent character of the business introduced to my office. Whatever credit for candour I might obtain for admitting such a charge, it would be insincere were I to do so. It may be that I did not in all things exercise a perfect judgement; yet, after well weighing the circumstances, considering how appearances were preserved; and especially the implicit confidence I placed in Fletcher, I am persuaded that any Solicitor in London, similarly placed would have acted, in the ordinary dispatch of business, as I did. Whether I should not have detected fraud, if the business had been introduced by a stranger; or had it been my duty to sift and investigate the claim as a purchaser's Solicitor would an abstract of Title, and the evidences by which it was supported, is a widely different question. True, indeed, had any salient fact creating suspicion shown itself, I conceive it would have been my duty to have paused and got it cleared up, before proceeding further in the business; but none such presented itself to my mind. On the contrary, there was everything to create confidence. But even if a degree of negligence be proved against me, does that establish my guilt? If so, then every one of the men of business through whose hands Slack's case passed are guilty. There are few transactions which if [13 MISSING, so following is the text from BB] afterwards reviewed with scrupulous severity, that would not exhibit features of real or supposed negligence, or error of judgment; and, although I am far from disposed to make illiberal remarks upon the conduct of others, yet, when my own conduct has not only been animadverted upon in a narrow and ungenerous spirit, but I have been pronounced guilty upon the strength of alleged negligence, I trust I shall be pardoned for pointing out acts of others, of at least equal inadvertence.

The first person officially employed was Mr. Jordan, the local registrar: he records the death of a person, said to have died in his immediate locality, although no such place as that assigned, namely, “South Terrace, Pimlico,” was known; and, although the account given him of the death was extremely suspicious, nevertheless, when applied to some time afterwards for a certificate of the death, he gave it without hesitation. This entry was the very foundation-stone of the fraud, and his certificate was the chief evidence of the *bona fide* character of the business, and prevented those inquiries which I might otherwise have conceived necessary; yet Mr. Jordan was an educated surgeon, and may be presumed, therefore, to be a man of intelligence, and fully aware of the importance of such entries.

Then we have our own proctor, Mr. Wills, a man of undoubted respectability and talent. He, shortly after the will was proved, applied to my partner for the parish in which the deceased died;” we neither of us knew, and accordingly instructed a man named Cranbrook, who was acquainted with the neighbourhood, to make inquiry. He did so, and reported that he could not distinctly ascertain; and before we could have further inquiry made, we received the probate from Mr. Wills. After my apprehension, my solicitor inquired of that gentleman how he had ascertained the parish. He replied, “I really can't tell whether we guessed at it, or how it was.” Then the probate was lodged at the Bank by my partner; and, notwithstanding it is said that the will, from no address of the witnesses being given, and one or two other circumstances, bore internal marks of suspicion, these were entirely overlooked by the solicitor to the Bank, as well as by the authorities at Doctors' Commons, although it was the bounden duty of those high authorities to scrutinize the will. The conduct of the Bank authorities is, however, the most remarkable: they, it appears, received the probate as of the will of Anne Slack, of Abbott's Langley, who owned and regularly received the [HO216] Dividends of a sum of £6,000 stock, although no mention of it was made in the will, which merely bequeathed the £3,500, and the entire effects were sworn under £5,000; yet, if she were the owner of both the amounts of Stock, she must have been worth at least £10,500; Still no inquiry was made, as appears by my partner's letter to Fletcher. Had a single question been put to my partner, or either of our clerks, when they from time to time called to inquire what progress was making, the mistake must have been at once detected, and the fraud exposed. Or had the signature in the Bank books been compared with that to the will, the mistake would have been

palpable, and the wicked design undoubtedly frustrated. It is far indeed from my intention unnecessarily to impute to the Messrs. Freshfields a want of skill or caution, not only in this prosecution have I had fatal proof of their great abilities, but the severe scrutiny to which claims to Stock and Dividends once passed to the Commissioners are exposed, has been a theme of constant murmuring in the profession, as putting Clients to uncalled for expense. But when such oversights are observable in those whose duty it was to investigate the claim, surely some allowance may be made for one who was the retained agent, and paid advocate of the Claimant. Every lawyer knows how his mind becomes biased [sic] in favor of his own client's case; and here it may here be proper to point out a most important error under which many intelligent persons, and, it is quite possible, some of the jury, laboured, namely, that the Executrix, and I, as her Solicitor, represented the will to be that of Anne Slack, of Abbott's Langley!

That is a very serious error; because undoubtedly under such an impression as this, I must appear a guilty person; in as much as I had no reason to doubt that she was still living. But there is no pretence whatever for such a charge, and the error only arises from an inattentive perusal of the case. One of the public journals states, that Emma Slack had represented herself "as the niece of Anne Slack, of Abbott's Langley, sister-in-law of Capt. Foskett"! Not only did Emma Slack never make any such representation (at all events in my presence) but there is nothing either in the will, the certificate of death, the affidavit at the Commons, the application to the Bank, or in any part of the proceedings, about Abbott's Langley, or which in any way connects the will with Capt. Foskett's sister-in-law, save only the fact of the deceased having once resided in the same street. On the [HO209] contrary, the certificate describes her as of the age of 68; Miss Slack of Abbott's Langley, being but 37; and the signature corresponded with that of an old lady, and was totally dissimilar from Miss Anne Slack's. Besides which, the will made no mention of the Stock in respect of which Miss Slack regularly received her Dividends, nor was any claim made for that fund. My Partner, or any of my Clerks, would at once have dispelled the illusion, had the Bank asked a single question in explanation of the remarkable discrepancy in the property being sworn "under £5,000", whilst, if the pretended deceased were the owner of both Stocks, her personal property would have been upwards of £10,000. Besides which when a Mr. Offley wrote to us in answer to our advertisement in the "Times," that "there was a Miss Slack at Abbott's Langley," Bircham wrote at once in reply, that we were quite aware of that, but she was not the person entitled. When also Mr. Freshfield referred to my communications with Capt. Foskett, I at once said that we had distinctly ascertained she was not the party entitled.

But although a large portion of the public has certainly laboured under this, as well as other very great errors, and unfortunately for me, I fear the Jury may have done so likewise. I am under no apprehension but that you will perceive that the only question in the case is, whether I really believed that the presumption which had been raised in favour of Capt. Foskett's sister-in-law, by her temporary residence in Smith Street, had not been completely rebutted by the positive facts as to age and handwriting; and whether I did not really and truly believe that the case of Emma Slack, 2 months afterwards introduced by Fletcher, was genuine.

Christmas, the Bank clerk, proved that he compared the handwriting of Miss Slack, of Abbott's Langley, with that of the owner of the Stock, and returned it to Fletcher, stating it agreed, "with a slight variation only, the letter being in a lighter hand;" in other words, that it appeared she was the owner. About 2 months afterwards he was told by Fletcher that she was not, but that he had found and produced the person who was. From his position in the Dividend Office, where he was Senior Clerk, he must have been privy to every step taken in Emma Slack's behalf, and to her receiving the fund; yet he caused no inquiry to be made, nor offered the slightest obstruction. He received, [HO210] he says, from Fletcher £100 for his information. How could he consider himself entitled to receive £100 for information from Fletcher, when he must have seen from the will, even if Fletcher had not communicated the fact, that the claimant knew of the existence of the

fund, and if legitimately entitled, could have required no information from him? The Bank, discovering that he had received this and other large bribes from Fletcher and other persons for information of this nature, suspended him but the prosecutors at the trial strenuously denied that he was in any way an accomplice. He may, indeed, have been an innocent man, but I submit to you, Sir, very confidently, that both from the bribe which was traced to and admitted by him, and the other circumstances I have mentioned, there were more tangible grounds for suspecting him of a guilty knowledge than myself.

The last person employed was Mr. Philpot, the broker, a respectable man, as I have always believed. I applied to him to identify me, proposing myself to identify the Executrix myself, but he said, "Oh, I suppose you know she is the Executrix?" I replied, "certainly; there was no doubt of that, for I was present when she proved the will." "Then," said he, "I will identify the lady; I do it constantly; it's the shortest way." He accordingly identified her and signed the usual declaration. I confess I thought it rather a loose practice, but he said it was quite customary, and was regarded as a mere form. There is no doubt that Mr. Philpot relied entirely upon me, and, Heaven knows, I did not mislead him, but such reliance must have been based upon his confidence in Fletcher, who originally introduced me to him, and through whom alone I was known to him. In the course of the 3 years he knew me, he had not seen me in business more than 3 times, and was never at my office in his life. If he, an experienced Stock-broker, could with any propriety place so implicit a confidence in me, surely I might well do so in Fletcher.

To these instances, I must add that of my partner, a shrewd and intelligent man, against whom no imputation has been raised, and who having placed himself under the protection of the Prosecutors, and given them every assistance, is pronounced to be above suspicion. But if it be said that I ought to have known of the fraud—nay, must have done so—so ought he. [HO217] He knew as much as I did of all the circumstances. He knew the facts upon which I concluded that Miss Slack was not entitled, and entirely concurred with me in opinion. With a perfect knowledge of all these facts, he lodged the probate of the fictitious deceased at the Bank with the claim, and took an active part in advancing it. Indeed, I never once attended to support it, being absent at the Kingston Assizes nearly the whole time the business was in progress. The conduct of Capt. Foskett deserves a stronger term than negligence; for he, as admitted upon cross examination, told me his sister in law was only 27 years of age, whilst she was 37 or 38; a fact of which he could not possibly have been ignorant, seeing that he was married to her sister and that the lady was living in his own house. Had he told me the truth which in a matter of business he was bound to have done, or, at least, if he had any objections to do so, he should rather have declined to answer, and not to have made so serious a misrepresentation; for to this fatal misstatement my catalogue of woe and misery is undoubtedly attributable. Had the presumption of residence been supported, instead of negatived, by an accurate statement of the age, I should certainly not have considered the disagreement in the writing as sufficiently conclusive. Indeed it is probable that her writing would never have been asked for, but that the combined facts of age and residence would have been satisfactory to me, and I should have had the pleasure, and the pecuniary benefit of introducing her to her property as I did with the Robins' family, David Smith's family and several others. Capt. Foskett never allowed me an opportunity of judging of the lady myself, although it appears she was at our office door one day in a cab, whilst he was conversing with me within. I endeavoured to ascertain something of the lady's mind to judge of the probability of her overlooking such a large sum of money and the Capt. said I inquired "if she had strong nerves"? This was not precisely my language, but whatever it may have been, the object was what I have stated. When I first saw the lady at the Mansion House, it was evident that I had been grossly misled as to her age; hence my pressing inquiry upon this point. The lady, as appears by her depositions, as if she was aware of the misrepresentations about her age at first swore "she did not know her age", but [HO218] seeing that I was determined to have an answer on this point, she at length said she was 37. My cross examination of her on this point, provoked as I was to

receive such an answer, and seeing how I had been misled, bore an air of discourtesy which may have offended her and all her friends; but I remarked by way of apology, "Recollect, Madam, the situation in which you and your friends have placed me." It became evident also she was of extremely unsound memory and a person very likely to have overlooked such a sum of money, as I might have seen if she had been introduced to me.

It was proved at the trial that there was some conversation with Fletcher and the Executrix about changing one of the £1000 notes. There may have been something said about this, but I have no recollection of it; but if it was talked about, the parties evidently thought it better to get this done when I was not present, for not a note was changed until I had done with the business.

The pertinacity with which the proof that I was present when the 600 sovereigns were received, and that they were taken by me out of the Bank with the Executrix, was adduced, and the elaborate pains taken to support it, demonstrates, I submit, the absence of any real evidence against me. I was indeed astonished to find such a point made of this; and that every exertion was used (and perhaps successfully) to persuade the Jury that I received this for my own use, there being no other evidence upon which to found such a suspicion than that I received it, and simply carried it out of the Bank for a lady who professed to have the Gout in her hands. As well might it have been imputed to me that I had received any given portion of the remainder, for I received, as is quite usual with Solicitors, the entire fund, - a fact fully recorded in my diary of that day. But if any presumption could fairly be raised that I had received this money for my own use (and the possibility of it was I have no doubt, one of the facts which influenced the verdict of the Jury) I submit, that the facts which have transpired since my trial fairly outweigh such a presumption, if they do not entirely disprove it. These are the confessions of Sanders, [HO219] the husband of Emma Slack; the admissions of Mrs. Sanders herself, and the confessions of Fletcher that I received only my regular professional charges; and the fact which a gentleman has lately come forward voluntarily to attest, namely, that I borrowed of him £100, at high interest but shortly after this business was settled. There is also the receipt for the entire fund entered in the Cash Ledger, and signed by the Executrix. Besides which, I submit to you, Sir, whether my receipt of this money, and allowing myself to be seen to take it away, was not, fairly considered, an argument in favor of my innocence: for had I really known that, instead of being engaged in an honest and legitimate business, I was party to a fearful robbery, I should hardly have received into my possession 600 sovereigns in this open manner; since nothing would have been easier than to have taken care that the whole amount be first received by the Executrix in notes, and which might have been afterwards converted and divided with the utmost facility.

It has also been urged against me, that I narrowly scrutinized the claim of Miss Slack of Abbott's Langley, but adopted that of Emma Slack without inquiry. It is not quite true that I received the claim of Emma Slack without inquiry; but I invite you, Sir, to consider the difference in the cases. In Miss Anne Slack's case I was instructed by Fletcher to ascertain if she was the party entitled, and if she knew it; but on no account to disclose the nature or amount of the property without his express permission. This required caution, secrecy [sic], and tact; an air of mystery and reserve therefore necessarily pervaded my correspondence. I unfortunately succeeded all too well in accomplishing the object of my deceitful and perfidious client. With regard to Emma Slack, her case presented itself in so conclusive a shape, that there seemed no room for doubt. Fletcher plausibly explained how he had met with her - there was the will, naming the very Stock; she produced a genuine certificate of the death. She was personally most respectable, and answered my inquiries without the slightest appearance of embarrassment; and not dreaming that so fearful a crime as the forgery of a will had been committed, I regarded the matter as one of the clearest and simplest cases in the office, and having introduced the Executrix to our Proctor; which I did merely from politeness to a new client and a lady, I left the business to be attended to by [HO220] my junior partner and Clerks, devoting my own attention to ~~special~~ other business, which required

more especial care and experience. Every step of the negotiation with Capt. Foskett is recorded in my Diary, and regularly charged to Fletcher's account; whilst the proceedings taken for Emma Slack are all regularly charged to her in the respective Diaries of myself and Partner.

In the previous narrative, I have confined myself to the case of Slack, not only to avoid unnecessary prolixity, but because, in the first, Stewart's, I was unhesitatingly acquitted by the Jury, in which I trust I may assume, from the summing up of Mr. Baron Gurney, the three learned Judges who presided throughout that trial fully concurred; and that the points which had created prejudice against me in that case were fully and satisfactorily met and explained. But were it not I feel it would be regarded as a work of supererogation, I could adduce much additional matter to prove the correctness of that verdict. Burchard's and Hunt's cases

were abandoned by the prosecution. I think I am justified in saying that they were "abandoned" not only because they preceded Slack's in order of date but the prosecutors will I think not deny their previous avowal that "there were but 2 cases in which they had a chance of convicting me, and that if I were acquitted in Slack's the prosecution against me would terminate. It was matter of sincere regret to me, as is well known to my Counsel and Solicitor, that these 2 Cases were not taken in their order, as they would have developed my innocence in the clearest light. This was probably well known to the prosecutors; and their passing them over was only another instance of the consummate skill and studious calculation by which I was overwhelmed. My Counsel were therefore perfectly sincere when, after the trial of Slack's, they urged the prosecution to try the other cases. There is, however, a circumstance which though it could not appear at either of the Trials, being separate, has been much commented upon to my prejudice and which it may therefore be proper to explain. I allude to the fact, that a different Proctor was employed in each of the 4 fraudulent cases. In the first case, Stewart's, Mr. Pott was employed, as he proved, by Fletcher and that I was [HO221] then a stranger to Mr Pott. In the second, Burchard's, I employed Messrs. Jennings and Cox, at the request, and upon the introduction of the brother of the latter, who at that time was a client; but having had some disagreement with those gentlemen about their Bill in this and other matters, I in the next case, employed Messrs. Iggulden and Puckle, who were the proctors of Messrs. Scoones, during the whole of my clerkship. Shortly after this, our firm became connected with Mr. Wills, he being the Proctor in an important suit, which had been before the Privy Council, arising out of the will of the Rev. Geo. Gordon Smith, deceased, in which we had been retained as Solicitors. We then employed Mr. Wills in all the cases that subsequently arose in the office, of which Slack's was one. Nothing, however, could more clearly show what unjust and irrational inferences are drawn from particular facts, when the mind is fairly saturated with prejudice, than the conclusions which have been drawn from this change of Proctors. Surely it would have been the course of a guilty attorney engaged in such hazardous proceedings, to have established a confidence with one respectable Proctor, and continue with him, who would naturally receive successive introductions of business with confidence, whilst comparative strangers would be more likely to scrutinize both the business and the parties introduced. When I retained Messrs. Iggulden and Co., they had perfect confidence in me from my long Clerkship of 17 years with the Messrs. Scoones and far easier therefore would it have been to have palmed off a suspicious transaction upon them. Besides which, it may be observed that it was only necessary to state to the Proctor what was the amount of the property was - not what it consisted of. I did indeed, as was proved by Messrs. Iggulden [+ Co's] Clerk, , in the course of conversation mention that the property consisted entirely of unclaimed Stock and Dividends; a communication wholly gratuitous, and showing, as I submit, how ignorant I was of any reason for concealment. I may here also be permitted to mention a similar gratuitous statement. A lady, named Wilkson, the wife of an old client, called at my office the day Fletcher introduced Sanders as Thomas Hunt. She called to see me on Mr. Wilkson's business, but I said, "I am sorry I cannot stop now, for I am just going by appointment to Drs' [HO222] Commons, to prove a will for a man named Hunt; a lucky fellow, too; for having been at sea half his life, the first thing he learnt after his return was, that his



grandmother had left him quite a little fortune in the funds, and the will was providentially found in the care of a woman, a friend and neighbour of the deceased.” I had forgotten this casual conversation, until long after my apprehension, when Mrs. Wilkson mentioned it to one of my Clerks. With reference to the hasty and illiberal hasty inference which was drawn with regard to the change of Proctors, I would beg to submit that there might be some reason to suspect a guilty motive, if a different Broker had been employed to sell the Stock in each of the 4 cases, because they of necessity knew what the precise nature and amount of the property was; but no such precaution was taken. In the 2 successive cases of Stewart and Burchard, I employed Mr. Hill. I did so from my temporary connection with him as a colleague on the Committee of the Southwark Literary Institution. Prior to Hunt's case, he had withdrawn from the Institution, and my connection with him had ceased. Fletcher then introduced me to Mr. Philpott, and I accordingly employed him in Hunt's and Slack's matters.

It would, Sir, occupy too much of your time, were I to detail the particulars of all the cases in which Fletcher traced out the true owners of unclaimed Stock and Dividends, and through my professional instrumentality placed them in possession of their rights; but as many persons who have since my trial been made acquainted with the way in which Fletcher dovetailed his fraudulent introductions with legitimate ones, have considered that they go very far to explain what has appeared mysterious and suspicious in Slack's case, I beg leave to quote two of these, which I will do as concisely as possible. The first is that of David Smith. It was some time in the year 1840 Fletcher told me he had found a poor man who was the eldest son of one David Smith who had died possessed of a considerable amount of Stock; and which with the Dividends, had been transferred to the Commissioners as unclaimed. [HO223] He subsequently introduced the man to me when it appeared that his father had died leaving a will, and he referred me to the executor. Him I accordingly saw and he said that all the Property known to himself and Co-executor had certainly been long since been administered. I acquainted him that the gentleman who had brought David Smith to me was a client of mine, and had authorized me to state that he could put the Executor in possession of a considerable sum to which the family was entitled but that he would require to be guaranteed the payment of a certain per centage as a remuneration for the trouble he had taken in tracing out the owner, and as a douceur for his information, but which would not be required until the property was actually realized. To this the Executor said there could be no objection, but he said “I would rather the terms should be negotiated by my Solicitors. I replied “by all means”. He then referred me to Messrs. Lawrence and Blenkhorne, of Bucklersbury as his Solicitors. With those gentlemen I accordingly negotiated terms—the property was recovered—the per centage was paid to me, and handed to Fletcher, who paid me my ordinary bill of charges, and no more. I was present when the fund was distributed among the different members of the family, to whom this money was indeed a Godsend for they were in the utmost poverty. Each paid into my hands his own quota of the per centage agreed upon with expressions of gratitude. I only wish those who have censured me for being concerned even in the most legitimate cases of unclaimed Stock and Dividends as unworthy a respectable Solicitor, had been present at this settlement, and witnessed the good which was done by transferring from the national funds that which belonged to these poor people.

The other case and that which more resembled Slack's was that of “George Robins, of Warwick House, Regent-street.” About the end of 1840, or beginning of 1841, Fletcher instructed me to communicate with Mr. Reid, of Ripley (the uncle of Mr. Bramall, my late Solicitor), who was one of the Executors of the deceased to ascertain if he knew of a sum of about £1,500 Stock in the deceased's name and which had gone to the Commissioners. I accordingly commenced a correspondence with him which was continued at intervals of several months, Mr. Reid being unwell, and I only wrote occasionally, as Fletcher reminded me of it. At length Mr. Reid called at my office, and although I entirely concealed from him [HO224] the nature and extent of the property, he was so far satisfied as to refer me to his Solicitors, Messrs. Smedley and Rogers, of

Jermyn-street. With them I accordingly negotiated terms; an agreement was prepared in which I inserted the name of a friend of mine as Trustee for Fletcher (who desired not to appear in it) the money was realized by the Executors, who paid me 100 guineas for the information, trouble, law charges, and some outlay. I consumed much time in this business, besides being at some expense; and Fletcher paid me £55 for my law bill, and I gave him a cheque for the remaining £50.

The letters and interviews herein were characterized by the same secrecy and mystery which had been noticed in Slack's case, until terms to Fletcher's satisfaction were arranged.

Since my Trial I have heard with astonishment that there are those who have supposed that I may not have been an avowed participator in the extensive frauds, or a sharer in the plunder, but that I may have connived at them. Merciful God, what suspicions and surmises obtain entrance to the mind when warped by prejudice! For this is to suppose that I became an accomplice in a fearful robbery openly performing a series of the most dangerous acts, which I might so easily have avoided for the ordinary professional remuneration, my share of which was but £7. 10s.! whilst Fletcher and his adept coadjutor who had less at stake and who for aught I knew, might soon place themselves beyond the probable reach of justice realized Four thousand five hundred pounds. But unreasonable not to say monstrous, as such a supposition appears to me, it may be proper to show what my position was at this period—the extent of Fletcher's value as a client and what my conduct was from the time of Mr. Freshfield's visit to the day of my apprehension.

I had then been 7 years in practice. By no ordinary labor, anxiety, and self-denial, I had formed a connection with about 150 respectable clients. Our Bills of Costs for the year

1842-3 exceeded £3000. I had a partner with whom not a word of misunderstanding had arisen since our connection. I may truly say, it was the exemplification of a happy partnership. The good understanding between us is proved not only by his letter to the "Times" of the 11th December 1843 in which he declares his perfect knowledge [HO225] "of my innocence and that a more honorable man or a better partner never existed - but also by his various letters to my private friends. We had 5 stipendiary and 2 articled clerks, and our connections were extending daily. Fletcher's business though as a Capitalist Bircham and myself considered him as one of a useful class of clients, was by no means considerable, his average annual business, introductions and all, not being more than a 30<sup>th</sup> or 40<sup>th</sup> of our entire income. I was as happy as a successful practitioner could desire. I contemplated and watched over the business I had formed with no common solicitude. After having successfully surmounted the difficulties of a commencement I indulged a sanguine hope that the object of my ambition, namely, to be the founder of a permanent and respectable firm was in a fair way of being accomplished. Is it then a suspicion that a reasonable mind could for a moment entertain that for the trifling remuneration I received, or to promote the villany [sic] of an individual client from whom I never received a favour in my life, I should have risked, nay, exposed myself to the certain forfeiture of a position so valuable, much more to the unspeakable horrors of its penal consequences? Fletcher was not a man with whom I had the slightest private acquaintance - I never ate or drank with him; I never was at his house in my life, nor he at mine, except in my office on business. Our connection was purely professional, and that rather of a cold and formal than a familiar character as clearly indicated by our correspondence, and proved by more than one of our clerks at the trial.

One of the facts most strongly urged against me at the trial was that I refused to give up when first applied to (for it will be observed that I only declined to give it up on the instant) the name of the Client who introduced Emma Slack to our office. But I submit to you, Sir, whether, if I had possessed a guilty knowledge, I should not seeing that the fraud was discovered, have secured my own protection by pointing out the only guilty party I knew. My firmness, obstinacy perhaps it may be termed, on this point so far from protecting me, necessarily brought on me the very first attack. That my prosecution was owing to this unfortunate fidelity to a client I had every reason

to believe a man of integrity Mr. Freshfield has himself declared. Some time after my apprehension when my solicitor Mr Gedye having thoroughly investigated my case [HO226] and satisfied himself that I was as innocent as the Proctor, the Broker or either of the other professional men through whose hands the business had passed he waited upon Mr. Freshfield, and inquired if it was really intended to persevere in prosecuting me, urging that I was willing to give every information in my power; indeed that I had done so when first applied to except the name of Fletcher which had been withheld from a belief that it would have been a violation of professional duty had I done so. "Yes," said Mr. Freshfield, "that's all very well, but he would not give the name - had he done so he would not have been where he is." There is indeed but little question that I should have been more fortunate had I really possessed a guilty knowledge, for in that case it cannot be fairly doubted that any man in such a situation would at once have secured his own safety by becoming a witness for the Crown.

Fletcher has I am told endeavoured to make it appear that I was under obligations to him for having sometimes lent me money but he took care to suppress the terms upon which he did so. He exacted from me interest at the rate of from 10 to 60 per cent for such occasional loans according to circumstances. I have sometimes got him to discount a bill which I had received for costs, and for which he regularly charged me 60 per cent. A few months after Stewart's business was settled, I with great difficulty prevailed upon him to advance me £200 but before he would consent he put me to the expense of insuring my life as a collateral security, which I accordingly did for his benefit, in the "Sun Insurance Office", besides which he made me pay him 15 per cent. This I continued to do until Mr Bircham purchased a share of my business in December 1841. Shortly afterwards I gave Fletcher a cheque for £50, with notice that I should pay off the remaining £150 unless he would allow it to remain at 10 per cent and would dispense with my keeping up the life insurance. After a good deal of hesitation, and finding that I was in earnest, and doubtless well knowing he could not have made more of so much of his money, he assented to my proposal. At the period of my apprehension I was still indebted to him in that sum, subject, however, to the Bill of our firm upon him of £40, for the conveyance of the property he had purchased a few months [HO227] before in Market Street, Westminster and also subject to my general bill upon him so that upon a proper adjustment of accounts the balance would probably have been in my favor. These are facts which he must have admitted if properly examined, and which I should have proved if permitted personally to submit

\* I. e. at that rate per annum for a few days, to meet sudden emergencies.

my Books and papers. By one of his letters to me published in the "Times" of the 23<sup>rd</sup> April 1844 it will be seen that I had applied to him to allow the payment of the balance due on my note to him to stand over and that by such letter, written about a fortnight after I had communicated to him Mr. Freshfield's visit he declined to accede to my proposal and gave me notice that he should require payment in January, alleging that he was quite short of cash, a falsehood which was clearly proved by the subsequent examination of his banking a/c which showed that he had to the credit of his deposit a/c a large sum certainly exceeding £1,000, for which he was only receiving 2 per cent. At the foot of this letter he says, "I have heard no more of the Bank business, and I suppose you have not." As this perfidious man must have been expecting to hear of my apprehension every hour and watching his opportunity to become "evidence for the Crown" as he has since confessed to Smith he anticipated, this letter appears to have had two objects—first, to allay any misgivings that might have arisen in my mind by boldly requiring payment of a debt; and secondly to get some answer to his inquiry upon a subject he must indeed have been anxious about. In reply I wrote him that the amount should be paid as he required and that in regard to Mr. Freshfield's inquiry I had heard no more and supposed they had found out their mistake. In explanation of my necessity of borrowing money at high interest I beg to state that at the period when I had the £200 of Fletcher I had been disappointed in the receipt of a larger sum from a gentleman in the Country

for whom I was town agent, a Mr [illegible] who unfortunately failed. No part of that sum was ever paid me. I had also some other losses and the rapid increase of my business required great additional outlay and I conceived it more prudent to borrow even at high interest than to displease valuable clients by [HO228] sending in their Bills unasked for. In Fletcher's case he used to ask for the Bill in any particular matter – as the settlement of a purchase or the like, but although he exacted such interest from me I had a general Bill upon him of several years growth. When Fletcher by his letter (which has likely amongst others fallen into the hands of the prosecutors) and inquiry reminded me of Mr. Freshfield's visit, I congratulated myself upon my firmness in preserving a client's confidence fully believing I should hear no more of the business, little dreaming that that client was deliberately awaiting the ruin which he must so well have known would speedily overtake his victim, or that the officers of justice were (as transpired upon cross-examination of Forrester) dogging my steps from morning till night. I need scarcely ask you, Sir, whether if I had known that Fletcher was making his thousands by systematic robberies, instead of receiving a moderate remuneration for information and assistance to legitimate claimants, I should not have commanded such pecuniary accommodation as the exigencies of my business required, without paying such extravagant interest, and without being driven to such a troublesome and expensive security as a life insurance.

Very elaborate pains were taken at the trial to prove that I had made an indorsement in pencil upon the order for payment of the Dividends to the Executrix, showing how the amount was to be paid. The learned Judge remarked, that this was the only act which had been proved to be done by me that did not fall within the regular province of a solicitor. This is one of those acts from which different minds have drawn conclusions diametrically opposite, but I confidently submit Sir to your enlightened and candid mind, whether this was like the act of a guilty or of an innocent man. My client was a lady; she from the Gout in her hand could only write with the greatest difficulty as her various signatures will clearly indicate. I asked her how she would like to receive the money, and indorsed the order accordingly. Is not this just what an ordinary person in common politeness would do, still more her Solicitor transacting the entire business for her, perfectly confiding in the legitimate character of the business, and precisely what he would cautiously abstain from doing if he entertained the remotest suspicion to the contrary?

But, Sir, if anything [HO229] further be necessary to demonstrate my implicit confidence in Fletcher and in the proper character of the business which he had introduced, I submit that it is conclusively furnished by my conduct from the time of Mr. Freshfield's visit to that of my apprehension, a period of 24 days. Day by day I was laboriously occupied by the multifarious duties of an extensive practice. The prosecutors know well that no attempt was made to escape, and it must be also as evident to them that not the slightest preparation was made for defence. For the latter purpose 2 things were indispensable namely, the papers in the different matters with the Books in which the different letters and other entries were made together with an adequate supply of funds. I neither secured the one, nor made the least effort to provide myself with the other. At this period there was due to our firm not less than £2,000 for Book Debts, and about £1,500 to myself. There was due to the firm in one sum £330 for principal, interest, and costs, and which was about to be paid off. I took no steps to hasten or secure the receipt of this money to myself. Bircham therefore received the amount a short time after my apprehension and refused to appropriate a shilling of it in my defence, being, as he said, advised by "his friends" to retain it, to meet claims "that might be made upon the firm." My personal credit at this time was good, and that of our firm was high but, during the interval of 24 days, when I might so easily have raised £500 to resist the fearful attack that was preparing against me, I neither applied for a single debt due to myself or the firm, or attempted to borrow a single pound although my balance at my bankers was at the lowest ebb, there being but £30 due to me when apprehended. As to the papers, they were not so much as referred to since I submitted those of Slack to Mr. Freshfield. They were all left in the places where they were severally deposited when the respective matters were settled.

The consequence was that the prosecution selected whatever they pleased for the support of the charge against me and my partner and his friends (as they assumed to be) carried off the remainder. I was thus put to the greatest possible inconvenience: when my Solicitor applied for them to Mr. Freshfield, he referred him to Mr. Bircham. Bircham was never to be seen by my Solicitor. In vain did he inquire for him, in vain did he write for an appointment with him; he was not to be found although he was in constant personal communication with the Prosecution. After great difficulty and endless applications, Mr Bramall did get some of the missing [HO230] books and papers from one of Bircham's friends, but the most important were either withheld, lost, or mislaid: And here I am constrained to advert to Bircham's conduct, although, Heaven knows, I have no vindictive feeling towards him or any man living. Full well he knew my innocence—most solemnly had he declared it and with equal solemnity did he pledge himself to assist me to the last in my cruel position. But in the face of all of this he under the influence (as he himself declared) of friends, who I will take the liberty to say, gave him advice as impolitic as ungenerous, he not only deserted me, but became the active agent of the prosecutors. But that his evidence must have been in my favor is sufficiently shown by their keeping him out of the witness box. His advisers appear to have conceived the notion that by my destruction, and his securing as he did all the Books and papers, he would also secure the entire practice. I was shocked to hear that he said he had no doubt I should be acquitted, but that it would be better for him if I were transported"! His better feelings however sooner or later will return and he will I am sure sincerely regret his ungenerous behaviour towards me.

Of course, when I was in prison my credit was stopped, and those indebted to me, not knowing what course affairs would take, demurred to paying me. I was unwilling to sacrifice my Books and furniture by a sale, believing that as the facts became better known to the prosecution I should be released. They thus fell a prey to my panic-stricken landlord and other creditors—not a single article was saved to me. My Books, scientific instruments, and articles upon which I set an especial value, were all swept away. In a short time the small sum at my command was expended. I became literally penniless, and, but for the generosity of a few still steadfast friends, I should have been driven upon the Gaol allowance long before my trial. I lost my counsel, Mr. Chambers because I could no longer pay him his 5 guineas per day for attending the almost endless hearings. My solicitor Mr Gedye next declared that in justice to his family he could no longer devote his time to my service without suitable advances. In this deplorable condition, Mr Bramall, with a generosity, for which I shall ever be grateful came forward and offered to devote his personal labor, but naturally observing that he could not undertake to provide the outlay. He mentioned [HO231] my condition to Mr. Parry a gentleman, just called to the Bar, and who recollecting me as the Secretary of the "Legal Discussion Society," and more recently as an active member of the Committee of the "Southwark Literary Institution" at once offered to attend for me before the Lord Mayor. I was then reduced to the most humiliating appeals for the means of existence and to provide for the unavoidable current outlay. But such was the prejudice which false, distorted, and exparte statements created in the public mind that even my friends became lukewarm and the subscription was less than I had many a time procured for a distressed family in a few days and from entire strangers. The consequence was, that much important evidence from Bath, Bristol and other places, was not obtained. The procuring of subpoenas was delayed so late, that some witnesses were not secured; and even the copies of the depositions were not had in sufficient time properly to obtain advice upon the evidence.

I had retained Mr. Thesiger for my defence but the payment of his fee was impossible. Mr. Wilkins was made acquainted with my destitute and forlorn situation, and most magnanimously consented to receive my papers, with such a fee as I could command. But without ungrateful disparagement to that gentleman or Mr Parry I may fairly ask if it was an equal contest between them and the four formidable and experienced advocates to whom they were opposed. Most unfortunate for me too

was it that Mr Bramall was prevented by illness from attending the Trial as thus I lost the great value of his superintendence, as well as his most important evidence.

These are facts which if not already known to you Sir may be distinctly ascertained, and need I ask whether it is possible to believe that I should have left myself thus destitute with ample means of preparation, if I had believed that a forgery had really been committed.

It only remains for me to advert to the confessions and declarations of the 4 other prisoners. Fletcher who projected the frauds, and under whose superintendence and direction they were executed has done me the niggardly justice to declare my perfect innocence. The genuine character of that declaration is better proved by the statements accompanying this Memorial than by any assertions of mine. Mrs. Dorey when first apprehended, unreservedly declared my innocence to the medical attendant, Dr. McMurdock, at the Compter. In her subsequent confession however [HO232] in which she was seeking immunity for herself by assisting the prosecution she evidently seeks by insinuations to implicate me but her inability to do this is equally clear from the entire absence of a single fact tending to do so; and this although she was not only Fletcher's active confederate in all these frauds, but had been most intimately acquainted with him for years before it was my misfortune to know him. It will be remembered, too, that she originally instructed Mr. Wilkins, as her counsel and who attended before the Lord Mayor for her until he became indignant at the misrepresentations she made to him in reference to his Lordship. With a full knowledge of all Mrs. Dorey's disclosures Mr. Wilkins accepted my defence purely from a belief of my innocence a belief which he not only solemnly declared in Court, but which he has publicly repeated and by a series of acts abundantly proved the sincerity of his declarations. Mrs. Sanders (Emma Slack) has always avowed my innocence. The declarations of her husband, William Sanders, have been made with a consistency and under circumstances to which I would beg Sir to draw your particular attention. It will be seen by his and Fletcher's confessions, and more particularly from Mrs. Dorey's, that he was an active accomplice of Fletcher's, that he personated the Claimant Hunt and that in Slack's in which his wife personated Emma Slack, he was an active tho' secret confederate. When the news of my apprehension was first published he and his wife immediately took flight together. He however communicated with his solicitor Mr. Harmer of Bristol and instructed that gentleman to endeavour to negotiate terms for his surrender at the same time admitting his guilt and declaring in the most positive manner [##] my innocence. When brought to the Compter he was in an agony of distress; he then said to Dr. McMurdock his medical attendant and in the presence of an officer - "I am a guilty man but there is one here who although almost a stranger to me I know to be as innocent as a child unborn, and that is Mr. Barber." "But said Dr. McMurdock, "he received your wife as Emma Slack." "Yes replied Sanders, "and he knew no better." To this I am assured that the Dr. rejoined "Well, Mrs. Dorey told me he was innocent." After his committal to Newgate Sanders repeated this declaration to the chaplain, and subsequently to many of the officers of the gaol. Whilst confined at Millbank, he again repeated this declaration to the Chaplain and to other persons there communicating many circumstances in [HO233] verification of his statement. Finally on board the "Lord Auckland" he made the full and written declaration subjoined hereto. This was strictly without any concert with me for although the "Agincourt" and "Auckland" lay side by side for 10 days neither I nor to the best of my knowledge, had any of my friends any communication with him direct or indirect. Of the genuine character of his declarations I do not think any reasonable doubt can be entertained, and considering that he is the husband of Emma Slack and was acting with Fletcher in the matter even before it was introduced to me, I do not think any reasonable mind can doubt that he must be a competent judge of my guilt or innocence. I trust I am therefore justified in saying, that all the 4 parties who designed and executed these frauds and by whose evidence alone the presumption against me could be clearly rebutted, have without concert with me or with each other and without a view to their own benefit but if anything to their prejudice at different times and under different

circumstances, some before and others after the Trial exonerated me from all guilty knowledge whatever.

Although this prosecution has driven me from honor happiness and the brightest prospects to ruin disgrace and misery, almost insupportable, I by no means impugn the propriety or necessity of it. On the contrary I feel that it was brought upon myself by my reliance upon the integrity and veracity of the deceitful and hypocritical Fletcher. The verdict too may be justified by the exparte evidence upon which it was founded, but I humbly submit that although I have no legal remedy by which I can extricate myself from the horrible situation in which a train of unfortunate circumstances almost unparalleled, have placed me that the facts which have transpired since my Trial have so materially altered the complexion of my case that I may fairly and reasonably approach her Most Gracious Majesty and pray for the speedy exercise of her blessed prerogative. I beg leave to remind you Sir that not a single fact incompatible with my innocence was proved; I was convicted upon suspicion only and undoubtedly circumstances were proved which unexplained formed a case of grave suspicion, but you will at the same time perceive Sir that they were of such a nature as was scarcely possible to be rebutted or explained except by those for whom I acted. That at least some of the Jury must have felt considerable hesitation in pronouncing me guilty I think may be fairly inferred from the delay of an hour and a half before they could agree upon their verdict. And without in the slightest degree imputing to those gentlemen any particular prejudice or illiberality I may venture to observe, that no person was less likely to receive the benefit [HO234] of a doubt than an attorney.

One fact of great importance as accounting for if not justifying my withholding Fletcher's name was that he was my client. This was indeed admitted by Mr. Erle in his opening but the learned Judge held that I was not entitled to the benefit of the admission, as it was not duly proved. It is however sufficiently manifest not only by his confessions but by the correspondence which I set out in the Memorial which I had the honor to transmit to you from Millbank, in May last. The confession of Mrs. Dorey I never saw until it was handed to me by a prisoner on board shortly before my arrival in this island. Although as I have observed that document was framed in no friendly spirit towards me it will be found as far as it goes to confirm every fact set forth in my Millbank Petition.

In this Memorial I have endeavoured to address myself to every point urged against me at the Trial and which may seem to require explanation; and I humbly hope Sir that, precious as your time is that you will favor my Statement and the documents by which it is supported with your attentive perusal and patient consideration and that you will be satisfied that I am indeed innocent of the charge for which I am suffering. When at Millbank I earnestly prayed to be allowed personally to submit my Books and Papers to the prosecutors, and to explain not only the circumstances which had been urged against me but any other that might have influenced the minds of those by whom the prosecution was conducted. I trust, therefore, that no new exparte statements, which I have now no opportunity of answering (although I am totally ignorant of any such) will be permitted to influence your mind.

If it should still appear to you Sir that I have betrayed in this unhappy business any degree of negligence or error of judgment allow me to remind you, that not one of the other parties innocently connected with it can be wholly absolved from a similar charge, and that I have already paid a fearful penalty for it, not only in the wreck of property connection, and a position of honor and happiness, but by personal sufferings of no ordinary kind. For 4 months I was a prisoner at the Compter, for 3 weeks at Newgate, for 2 months in the gloomy abode at Millbank, for 4 months in that horrible dungeon, a convict prison ship, and here I am doomed to the most humiliating labour with food that hardly sustains nature. I am now in the Hospital and in so reduced a condition that it is extremely doubtful if I shall be alive when the result of this appeal shall be

brought to this scene [HO235] of misery, but if my life should be spared, I shall then have endured 2 years of imprisonment, illness, degradation, and suffering in every form.

In praying for the restoration of my liberty it will not perhaps be regarded as impertinent, if I show that whilst by unwearied industry I acquired for myself an honourable position in life and still greater promise I was not indifferent to the welfare of others and the general progress of society. Immediately prior to my leaving Tonbridge, I established a popular Literary and Scientific Institution there. In London I projected and established the "Legal Discussion Society, of which I was afterwards elected Secretary and Treasurer. For the 6 years prior to my apprehension I had been an active member of the Committee of the "Southwark Literary Institution" and I had the honour to co-operate with Lord Brougham and the late Dr. Birkbeck in founding the "Adult Instruction Society." At the suggestion of some benevolent persons I became the Honorary secretary to the "Builders' Benevolent Institution" to which upon my personal application, the Marquis of Westminster became Patron. I prepared a code of laws for its government, and performed a mass of initiatory labour for this infant Charity. Those who know me can also bear witness to my prompt co-operation in every philanthropic object to the extent of my slender means and humble abilities. The respectable gentleman to whom I served a continued Clerkship of 17 years attended my Trial and proved that during the whole of that period my conduct was most exemplary. The unblemished Character + reputation which I have since borne, both as a member of Society and of my profession was proved upon the oaths of witnesses, Barristers, Solicitors, Merchants, and other gentlemen of rank and Character.

In the earnest hope that you will be pleased to submit my case to the favorable consideration of her Most Gracious Majesty as one deserving the exercise of her high and blessed prerogative and that I shall be restored to that society whose laws I have never in the slightest degree offended and of which although a humble , I have not been altogether a useless member, I have the honor to remain, Sir, with the utmost respect, Your most obedient and very humble servant

WILLIAM HENRY BARBER.

Norfolk Island

14th Decr. 1844.

Please see copies of Documents next page.

[Ends at HO235, followed by copy documents]



## Appendix 34 Version of Memorial from Norfolk Island as published

### PART 1.<sup>77</sup>

#### MEMORIAL.

To THE RIGHT HONOURABLE SIR J. R. G. GRAHAM, BARONET, Her Majesty's Secretary of State for the Home Department, &c. &c. &c.

SIR,—I once more crave leave to address to you my humble petition. It is scarcely necessary to remind you that I am the Solicitor who was convicted on a charge of uttering a will of one Anne Slack, knowing the same to be a forgery. Of such guilty knowledge, as of all participation in or criminal connection with the fraud effected by such forgery, I most solemnly assure you, Sir, I am wholly innocent.

Whilst a prisoner at Millbank, I had the honour to transmit to you a Memorial, embodying the circumstances of my unfortunate case; but, from the distracted state of my mind at that period, the statement was, I fear, exceedingly imperfect. Permit me, therefore, now to submit a narrative, which I trust will be found to embrace every material feature, and to which, as well as to the subjoined declarations and confessions made since my trial, I humbly but most earnestly entreat the favour of your patient attention.

I was articled to those eminent and most respectable Solicitors, Messrs. Scoones, of Tonbridge, with whom I continued seventeen years, when I left to practise on my own account, having received from those gentlemen a highly commendatory testimonial. After a few months' residence at Brighton, devoted to study and preparation, I (in 1837) established myself in London. About eighteen months afterwards, Fletcher called at my office, inquiring into the validity of a claim which a client of mine had preferred to a portion of the Angel Estates, and who had applied to him to advance the necessary funds.

I told him I considered the case hopeless, and dissuaded him from the loan which he had contemplated. Upon inquiry of a client, who called at my office a few days afterwards, I learned that he was a retired surgeon, and that he was living in a house of his own, and was, besides, possessed of considerable landed property; in fact, an affluent and, ostensibly, most respectable man.

A few months afterwards he consulted me upon a dispute with one of his tenants; and from that time to the moment of my apprehension, I continued to be his ordinary solicitor. His business consisted of the preparation of agreements with his tenants, the adjustment of differences between them, and the occasional investment and transfer of his capital. In deportment, he was reserved but gentlemanlike.

When I had been concerned for him about a year, he introduced to me an old and infirm, but respectable-looking woman, as “Miss Stewart,” who represented herself as the sister of one John Stewart, who had died, leaving some money in the funds. Administration had been applied for, but finding the aid of a solicitor necessary, Fletcher introduced the claimant to me. The Commons being convinced of her identity, administration was granted, and the Bank, being also satisfied, she obtained the fund. About this period, Fletcher told me that he had the means of

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<sup>77</sup> BB (1853, 9<sup>th</sup> ed.) 66-102 (47-83).

obtaining information at the Bank as to the amount of stock and dividends unclaimed, and that he devoted a portion of his time to tracing out the owners, with a view to a liberal remuneration for his trouble; but, in order to secure such remuneration, an agreement was necessary, which he should sometimes require me to prepare. I continued his solicitor about five years, in the course of which he traced out several of the true owners of this kind of property, and through my professional instrumentality placed them in possession of it. But, during the same period, he also introduced four different persons, apparently having no connection with each other, and at intervals of about a year, who claimed and procured a large amount of property (by means of false personations), to which they had no real title.

These cases were brought into the office precisely in the same way as the genuine cases; and as appearances were preserved, and every precaution was taken with consummate subtlety, - and, above all, as I placed implicit reliance on Fletcher's integrity, - not the slightest suspicion of fraud ever occurred to my mind. In speaking and writing to me about them, Fletcher affected to regard them as the most ordinary and legitimate business, frequently writing a long letter on different matters of his own and genuine bank cases, and in the same communication referring to and giving me directions in these fraudulent transactions. The first fraud was Stewart's; the second was a case of Burchard's; the third, Hunt's; and the fourth, Slack's. It was in the last that detection occurred, and which led to the discovery of the rest. The circumstances of Slack's case are as remarkable, as the means adopted were crafty and iniquitous. They require far more attention than I believe has ever yet been paid to them, in order truly to understand the part which I have taken, and the means by which my faith and confidence were obtained, and whereby I was so effectually and fatally misled. I will state them as perspicuously as my enfeebled energies will permit.

In the autumn of 1842, I first received Fletcher's instructions in this matter. He said there was a sum of £3,500 stock in the name of "Anne Slack, of Smith Street, Chelsea;" that he had ascertained there was a lady of the same name living with Captain Foskett, of Abbott's Langley, and he requested me to communicate with the captain, to ascertain *whether she was the party*, and if so, if *she was aware of her rights*; but *on no account to disclose the nature of the property without his express authority*; - hence the correspondence of myself and partner with that gentleman, and my subsequent interviews with him and his solicitor. In the course of this negotiation, I learned that the lady had once lodged in Smith Street, Chelsea, a circumstance which raised a strong presumption of her identity; but, unfortunately for me, the statement as to the residence was accompanied with another, which raised a much stronger presumption that she was not the party; namely, her age. The captain, either from some delicacy (a most unjustifiable and calamitous one) about the age of an unmarried lady, or some other motive, represented her as only *twenty-seven* years old, whilst, in truth, she was *six, or seven and thirty*. I made some other inquiries of the captain, but without eliciting any fact which raised the least presumption of his sister-in-law's identity, beyond her temporary lodging in Smith-street.

The particulars thus collected, I fully reported to Fletcher, especially the two facts as to the residence and age. He said, "It is hardly possible she can be the party, as the owner of the stock had executed a power of attorney twelve years before, which Miss Slack, of Abbott's Langley, could not then have legally done, she being then a minor; but," continued he, "if you can obtain her handwriting, I will have it compared with the signature at the Bank, which will effectually determine the question." I accordingly applied by letter to Captain Foskett for it, and his solicitor subsequently brought me a letter written by the lady. This I enclosed in a letter to Fletcher; and it was in this important stage of the inquiry where he grossly deceived me. In a few days he brought the letter back, stating, "*It is now quite clear that this lady is NOT the party entitled, as the owner of the stock writes a large stiff hand, like an elderly person*, whilst this lady writes the usual fine running hand of a young lady." He added, "that Miss Slack, of Abbott's Langley, held a sum of £6,000 stock, but that

the signature to that and the £3,500 were totally dissimilar;-in fact, that the writing of this young lady was as unlike the writing of the owner of the unclaimed stock, as ordinary writing was unlike print.” At the same time he made this report, he handed me what he said was an extract from the letter of his friend at the Bank, but without leaving me the letter itself, which confirmed his report.

I therefore concluded, without doubt, that although it was certainly a remarkable coincidence that two ladies of the same name, and both holders of funded property, should have resided in the same street, yet that the statement of Captain Foskett as to the *age*, and the report of Fletcher upon the *writing*, united in satisfactorily proving that the sister-in-law of the former had no connection whatever with the unclaimed fund. I accordingly wrote to Captain Foskett's solicitor to that effect, returning his client's letter. I remarked to Fletcher on the singular coincidence of two separate holders of stock of one name and who had resided in the same street. He said, “It is not so very extraordinary, as Smith-street is one in which many persons live for a season only, and then remove; and Slack is by no means so uncommon a name as you suppose, there being a great many in the Bank books” I most implicitly believed his report, not only from pre-established confidence in himself, but because I was in some measure prepared for a result unfavourable to the lady's identity, from her brother-in-law's statement as to her age. Moreover, I believed that Fletcher was, as he affected to be, chagrined and disappointed, that after so much trouble, he had failed to discover the true owner.

My partner and I talked over this business as of the other matters in the office, and particularly the result of this inquiry, and we both thought that the presumption which had been raised in Miss Slack's favour by the fact of former residence merely, was completely rebutted by the apparently conclusive facts as to age and writing. All idea, therefore, of this lady being entitled was wholly dismissed from both our minds.

Fletcher expressed himself exceedingly disappointed, but said he should resume his inquiries for the right party. A few days afterwards he wrote us a letter, expressing his intention of going to *Bath*, as he had reason to suppose, from the death of a lady of the name there, that the owner might be heard of in that quarter.

After his return, he called in my absence at our office, and left a copy of the “Bath and Cheltenham Gazette,” in which he had inserted an advertisement for the representative of “Anne Slack, formerly of Smith-street, Chelsea,” and referring parties to Barber and Bircham.\* In answer to this advertisement we received a letter from a Jane Slack, of Bath, stating that she was the niece of Anne Slack, and pretending to have a claim. This we answered. Shortly afterwards we received a further letter, in which the writer stated that she was satisfied she could not be the party inquired for. Upon a careful consideration of this correspondence, after my apprehension, a suspicion arose in my mind that it was fictitious, and my solicitor accordingly went to Bath and inquired for the writer, when he discovered that she was no other than the identical EMMA SLACK and that she

\* This Memorial was prepared in the absence of all my books and papers, but its accuracy is now verified by affidavit filed in the Court of Queen's Bench. The entries in my diary are now given at p. 124.

had taken lodgings merely to have our answers to her letters received there. The villanous subtlety of Fletcher thus became evident. Instead of Bath being the object of his journey, it was Bristol, the residence of Sanders and his wife, where the remainder of the plot, and the details by which my eyes were to be blinded, were doubtless arranged. If, Sir, you will take the trouble to refer to the “Times,” of the 23rd April last, containing my address to the Court, or to my memorial addressed to you from Millbank, it will be seen that the letters of this pretended Jane Slack were

*regularly sent to Fletcher, and that at the same time he affected to me to have no knowledge of her whatever.* One of the numerous and extraordinary unfortunate circumstances to which I became the victim, was the illness of my solicitor at the time of my trial, whereby I not only lost his important services, but his evidence of the result of his inquiries at Bath. From Sanders' information since the trial, it appears that he had, by agreement with Fletcher, registered the death of one Anne Slack, at Bath, some time before the taking of the lodgings there, but when a certificate was applied for, there appeared to have been an error in the entry, and that Fletcher and he then determined to register a death at Pimlico, which accounts for Jane Slack's somewhat abruptly breaking off her correspondence with our firm. From the middle of January, when the communications with Captain Foskett terminated, to the early part of March, Fletcher pretended to be exerting himself to trace out the true owner of the stock. It was then I suggested than an advertisement in the "Times" might produce the party. He assented to this, and one of our clerks prepared such an advertisement and got it inserted. Several persons applied in consequence, but Miss Slack's (of Abbott's Langley) friends took no notice of it. A letter was, however, sent us by a Mr. Offley, intimating that there was a lady at Abbott's Langley of the name. *Mr. Bircham wrote in reply, that we had ascertained she was not entitled.\** A few days afterwards, i.e. on the 15th, Fletcher called, and said, that after failing in all his previous exertions, he had at last met with the real owner by the merest accident. He said, that whilst superintending some repairs of a house he had recently purchased at Westminster (the conveyance of which we had

\* See Copies of the Entries in my Partner's Diary.—P. 126.

prepared), he got into conversation with one of the workmen, and finding that he was a Chelsea man, he inquired if he knew anybody of the name of Slack there; that the man then referred him to a house at Chelsea; that upon inquiry there he was referred to No. 7, Francis-street, Tottenham Court Road, where he found a highly respectable woman, who was the niece of the owner of the stock. He said he was quite satisfied of the identity of her aunt, as he had procured a fac-simile of the signature to the will, and had it compared with the Bank books, and they tallied exactly. I congratulated him upon the lucky incident which had led him to the owner; but he said, with a shrug of well-feigned disappointment, "Yes, but I shall gain nothing by it, as she does not require my information." I said she may not be aware of her right to this particular stock. He said "Oh, yes she does, as it is expressly named in the will. But," said he, "she does not appear to be particularly connected with a solicitor, and I will recommend to her your firm." I thanked him; and the next morning he introduced her as "Miss Slack." She was dressed in black, and was very respectable in appearance. She produced the will, and I particularly noticed that the signature *exactly corresponded with the description Fletcher had originally given me of that in the Bank books*, being like an old lady's, and the very opposite of Miss Slack, of Abbott's Langley. At the same time she produced an official copy of the registration of her aunt's death at Pimlico, by which it appeared she had died in the previous February, of gout in the stomach, aged 68. I made some inquiries about the deceased, which this arch imposter answered with great readiness. She said she should have proved the will before, but she had been ill; which statement seemed quite borne out by her delicate appearance. She was studiously disguised, wearing light ringlets (her natural hair being black), and complained of gout in her hands and feet, so that she could only walk with difficulty. From the precision of dress and stiffness of her air and manner, she had all the appearance of being, as she represented herself, an unmarried lady, and was about five-and-thirty years of age. She professed to treat my services as somewhat superfluous, observing that it was rather a proctor's business. I said it certainly was, and that the aid of an attorney was not absolutely necessary. Fletcher then remarked, that as the dividends of the £3,500 had been transferred to the Commissioners for the Reduction of the National Debt, he would recommend her to avail herself of my professional assistance.

She asked what our charges would probably amount to? I answered, about £10. She said, if they were not likely to exceed that, she would be glad if I would attend to the matter for her, as she was not accustomed to business. I told her that she would have to advance the probate duty, which would amount to £80. She said she was not immediately prepared with this, but had no doubt she could borrow it. Fletcher then said that as the business would now be in my hands, and I was his solicitor, he would advance it, if she would authorize me to retain the money for him. To this she assented, and he gave me a check for the money. I then accompanied her to Doctors' Commons, where she proved the will in the usual way. It was attentively perused by our proctor, who administered the customary oath, without making any remark upon it. I remember saying to Fletcher, he might as well accompany us to Doctors' Commons, but he said that as his presence was not required, he must attend to some business of his own. After the will had been proved, the sham executrix took a cab, directing the driver to conduct her to 7, Francis-street. Upon receipt of the probate from our proctor, *Mr. Bircham prepared the application to the Bank* for the stock. This being signed by the pretended executrix, he lodged it with the probate at the Bank; and, after several inquiries, sometimes made by himself, and at others by a clerk, he learnt that the stock had been transferred into the name of the executrix. He accordingly apprised her of this by letter, as well as Fletcher. Whilst this part of the business was in progress, I was much engrossed by the business of the Spring Assizes, and was absent on the Home Circuit about ten days, during which Bircham superintended the business. On my return I found that Fletcher and the pretended Miss Slack had severally called at the office complaining of delay. Accordingly, upon learning from Bircham that the matter was ready for settlement, I directed a clerk to make an appointment for Miss Slack to attend and settle, and for Mr. Fletcher to attend and receive his £80. She came on the 7th of April, when I accompanied her to the Bank. After passing through the usual routine, and her signing all the necessary books, she received the stock and dividends, amounting to about £4,600. In the course of this, a circumstance occurred which I think you will allow, Sir, was most unfairly pressed against me at the trial to prejudice the jury, namely, that £600 of the fund was obtained in gold, and that it was delivered to me. The simple fact was, that being with the executrix, and she having, or professing to have, the gout in her hands, I carried this weight of gold for her till she got to a cab. Fletcher met us in the rotunda of the Bank, and afterwards attended our office to receive his £80. When this was done, she paid him £5 for the use of it and his trouble, which he received with a well feigned appearance of dissatisfaction. Our law bill was £13, for which she handed me £15. All the money—the £4,600—was counted over, and she signed the usual receipt for the whole amount, in a cash account entered into the office ledger. In signing her assumed name, “Emma Slack,” she appeared to have great difficulty in writing, but which it has since occurred to me was probably affected, lest I should recognize the writing of the Jane Slack, of Bath. This being settled, and Fletcher having offered to accompany her to a cab, they left our office, the executrix having the funds in a bag. From that moment I never saw or heard of her until some time after my apprehension, when I was told that she was a Mrs. Sanders, a name that was never breathed by Fletcher or herself during the whole of the business.

I think, Sir, you will perceive how easily any solicitor might be deceived by such conduct as I have described, especially placing, as I did, implicit reliance on Fletcher's integrity. Throughout the transaction, Fletcher affected much mortification that he should have lost the benefit of communicating the secret of the unclaimed stock to the proprietor. He had ample means of obtaining confidential information from the Bank, and in the course of this business he called and told my partner, and afterwards myself (as appears from our respective diaries), that the Bank had in error entered the two Miss Slacks “deceased” in their books—i.e., Miss Slack, of Abbott's Langley, who was the owner of the £6,000 stock, and the old lady of Pimlico, Emma

Slack's aunt, so that when the former went to receive her dividends, she would find herself so entered, and some difficulty or confusion might arise. I observed to him, as our knowledge of this error is only through you, we cannot set them right. "Oh, no," said he, "my friend will see to that; I am surprised they should have made both parties 'deceased,' even though they consider them to be one, it is not their usual practice." Whether he endeavoured to get Christmas to alter the books and failed, or whether Christmas promised to do so, and either forgot it or found it impracticable, I have no means of judging; but, unless he supposed the books to have been altered by Christmas, he must certainly have been in great anxiety—seeing that the Bank had, contrary to his expectations, made Captain Foskett's sister-in-law "deceased." From his admission to Smith, and his whole conduct, it is now evident that he calculated, that if the fraud were detected (and which it was almost certain to be), he should escape by becoming "*evidence for the Crown*," as he had throughout acted with extreme caution, and had studiously avoided any overt act. This caution, though very apparent upon a review of his conduct, did not particularly strike me at the time, as there was no necessity for his attending at Doctors' Commons, or before the authorities at the Bank; and there was a very good reason, or rather plausible pretext, assigned for some precaution, namely, that his appearing in Bank matters might lead to the disclosure of his connection with his friend there. He was equally reserved and guarded in Robins, Smith's, and other genuine cases.

After the settlement on the 7th of April, the business had entirely passed from my mind, until the 15th of November following, when Mr. James Freshfield called and inquired about it. I immediately showed him all the papers, and gave him every information I possessed, except the name of the client who had introduced the executrix. I told him that I was under a strong impression that his inquiry arose from some error in the Bank books, and therefore declined to furnish the name of a client who might be exposed to annoyance erroneously: at the same time I said, if he would communicate with me again in a day or two, I might feel at liberty to give the information he pressed for. He then left, and I wrote Fletcher a letter, of which I think the following is a literal copy:\*

"15th November, 1843.  
(Wednesday.)

"DEAR SIR, - I have received a communication from the Bank, in reference to which I shall be glad to see you. Tomorrow I have a cause to try, but on Saturday, if you will call, I shall be at the office.—Your's faithfully, -

"J. FLETCHER, Esq."

"W. H. BARBER."

He came on Friday, when I acquainted him with the particulars of Mr. Freshfield's visit. He said, "You ought not to be surprised at that, after my having apprised you of the mistake which had been made in the Bank books—the inquiry is precisely what I expected—but the error will be put right, and you will hear no more of it." I said I had no doubt that it was so, but it would be satisfactory to know that the mistake had been found out and corrected, and I would ask Mr. Freshfield if it had been done. He, however, dissuaded me from this, observing, "It will only afford him another opportunity of probing you, to learn, if possible, from whom the information was originally obtained about the stock; but I know all that is doing at the Bank as well as Mr. Freshfield does, and that the error will be soon corrected—depend upon it, you will hear no more of the matter." I certainly felt no anxiety, believing that if the mistake (which I firmly believe had been made) were not corrected, that further inquiry would be made by Mr. Freshfield or the authorities at the Treasury. Unfortunately, no further inquiry was ever made, and becoming engrossed with the multifarious concerns in the office, the matter quite passed from my recollection until the 9th

of December (twenty-four days after Mr. Freshfield's visit), when I was apprehended on my way to my office, shortly after nine o'clock in the morning. I was taken direct to the Mansion House, when I was immediately searched; my pocket book and other papers, with the keys of my office desks and

\* I have since compared it with the copy given in the brief to counsel, and find it verbatim.

drawers, were taken from me. I wrote notes for my partner and managing clerk, Mr. Price, which I delivered to Forrester. I was kept close prisoner until one, and my urgent request to be allowed to send again for my partner or counsel was refused. About half-past one, Forrester returned with my partner and Price—the notes having been kept back until my office had been thoroughly ransacked. Bircham, knowing all about the business, naturally expressed his astonishment at the position in which I was placed, observing, “if you are guilty, I am guilty, but of course you will soon be discharged, Fletcher will at once explain it.” We determined he should instantly fetch Fletcher. He had no sooner left for this purpose than I was ushered into the presence of the Lord Mayor, without counsel or other assistance, although Mr. Clarkson, Mr. Freshfield, with his clerks, and a body of witnesses, were all arrayed for the prepared attack. Mr. Clarkson suggested that I should be remanded, without examination, till Thursday; but as I must remain in custody (bail being refused) meanwhile, which would very seriously have prejudiced my clients, and conceiving that no case could possibly be made out to justify my detention for a single hour, I preferred that the case should be gone into, unaided though I was. In the course of the examination, Bircham arrived in the room with Fletcher, and I then retired with the former, and conferred on the propriety of calling the latter, when we determined that, however unpleasant it might be for him to be so suddenly placed under examination, yet, that as he was the only person who could explain the business, he must be called. We then beckoned to Fletcher, who was standing at some distance. We told him that he must really explain the matter. He said, “I shall be pressed to divulge the name of my informant at the Bank.” I replied, “I conceive you are not bound to do that.” He said, “Will you protect me if I am asked the question?” I replied, “I will certainly submit that it is a question you are not bound to answer.” He then said, “Had I not better account for my connection with the executrix by meeting her at the Bank?” I said, “By no means; on the contrary, *state the precise truth in every particular.*” He again urged, that he was afraid they would press him as to his informant at the Bank, and suggested that before he appeared as a witness we ought to have some further conference. I replied, with some warmth at his hesitation, “Even if you should be pressed to reveal the name of your Bank friend, I can't help it; you know how you accounted to me for meeting with Emma Slack, and I have no alternative but calling you; my detention in custody, even for twenty-four hours, would do me irreparable mischief. Refuse, if you please, to disclose your friend's name, *but, for God's sake, don't build up a particle of fiction.*”<sup>\*</sup> My partner also urged him in a similar manner, reminding him that he was in duty bound to state what he knew, after the serious aspect which the matter had assumed, and that such information must at once release me. Without receiving or waiting for any direct answer, I called him before the Lord Mayor. I have set this out with some particularity, as the prosecution, with that exquisite skill (but as I humbly think not with equal fairness) which has characterized the entire prosecution against me, proved the fact of my being in conference with Fletcher prior to calling him, but suppressed the fact of its being in the presence and hearing of my partner, and without putting in Fletcher's deposition, which, however prejudicial to him, would have shown the deception he had practised upon me.

I have now, Sir, narrated as perspicuously as my enfeebled energies will enable me—for I am now in hospital on the bed of sickness—the entire history of this to me most melancholy business. In the absence of all my books and papers, I can only rely upon my memory for dates and other particulars, but I believe that no material inaccuracy will be found. As the perusal of the naked detail, upon which I have entered, will of itself occupy a sufficient portion of your valuable time,

I could have wished to stop here, leaving you to draw your own conclusions—aided by the confessions, declarations, and certificates appended hereto. There are, however, some points upon which I feel constrained to address to you a few observations.

It has been said, that if innocent, I have at least betrayed gross NEGLIGENCE in not detecting the fraudulent character of the business introduced to my office. Whatever credit for candour I might obtain for admitting such a charge, it would be insincere were I to do so. It may be that I did not in all things exercise

\* See his Confession to Dr. Browning, of what passed at this conversation.—P. 97.

a perfect judgment; yet, after well weighing the circumstances, considering how appearances were preserved, and especially the implicit confidence I placed in Fletcher, I am persuaded that any solicitor, similarly placed, would, in the ordinary dispatch of business, have acted as I did. Whether I should not have detected fraud, if the business had been introduced by a stranger, or had it been my duty to sift and investigate the claim as a purchaser's solicitor would an abstract of title, and the evidences by which it was supported, is a widely different question. True, indeed, had any salient fact creating suspicion shown itself, I conceive it would have been my duty to have paused and got it cleared up before proceeding further in the business, but none such presented itself to my mind. On the contrary, there was everything to create confidence. But even if a degree of negligence be attributable to me, does that establish my guilt? If it does, then every one of the men of business through whose hands Slack's case passed are guilty. There are few transactions, which afterwards reviewed with scrupulous severity, that would not exhibit features of real or supposed negligence, or error of judgment; and, although I am far from disposed to make illiberal remarks upon the conduct of others, yet, when my own conduct has not only been animadverted upon in a narrow and ungenerous spirit, but I have been pronounced guilty upon the strength of alleged negligence, I trust I shall be pardoned for pointing out acts of others, of at least equal inadvertence.

The first person officially employed was Mr. Jordan, the local registrar: he records the death of a person, said to have died in his immediate locality, although no such place as that assigned, namely, "South Terrace, Pimlico," was known; and, although the account given him of the death was extremely suspicious, nevertheless, when applied to some time afterwards for a certificate of the death, he gave it without hesitation. This entry was the very foundation-stone of the fraud, and his certificate was the chief evidence of the *bona fide* character of the business, and prevented those inquiries which I might otherwise have conceived necessary; yet Mr. Jordan was an educated surgeon, and may be presumed, therefore, to be a man of intelligence, and fully aware of the importance of such entries.

Then we have our own proctor, Mr. Wills, a man of undoubted respectability and talent. He, shortly after the will was proved, applied to my partner for the parish in which the deceased died;" we neither of us knew, and accordingly instructed a man named Cranbrook, who was acquainted with the neighbourhood, to make inquiry. He did so, and reported that he could not distinctly ascertain; and before we could have further inquiry made, we received the probate from Mr. Wills. After my apprehension, my solicitor inquired of that gentleman how he had ascertained the parish. He replied, "I really can't tell whether we guessed at it, or how it was." Then the probate was lodged at the Bank by my partner; and, notwithstanding it is said that the will, from no address of the witnesses being given, and one or two other circumstances, bore internal marks of suspicion, these were entirely overlooked by the solicitor to the Bank, as well as by the authorities at Doctors' Commons, although it was the bounden duty of those high authorities to scrutinize the will. The conduct of the BANK AUTHORITIES is, however, the most remarkable: they, it appears,



received the probate as of the will of Anne Slack, of Abbott's Langley, who owned and regularly received the dividends of the £6,000 stock, *although no mention of it was made in the will*, which specifically bequeathed the £3,500 only, and *the entire effects were sworn under £5,000*; yet, if she were the owner of both the amounts, she must have been worth at least

£10,500. Still no inquiry was made, as appears by my partner's letter to Fletcher. Had a single question been put to my partner, or either of our clerks, when they from time to time called to inquire what progress was making, the mistake must have been at once detected, and the fraud exposed; or *had the signature in the Bank books been compared with that to the will*, the error would have been palpable, and the nefarious design certainly frustrated. It is far indeed from my intention unnecessarily to impute to the Bank or their solicitors a want of skill or caution: but when such oversights are observable in those whose duty it was to investigate the claim, surely some allowance may be made for the retained agent and advocate of the claimant. Every lawyer knows how insensibly his mind becomes biased [sic] in favour of his own client's case.

It may here be proper to point out a most important error,

\* See Extracts from Diaries.—Pp. 124–126.

under which many intelligent persons, and, it is quite possible, some of the jury, laboured, namely, that the executrix, and I, as her solicitor, represented the will as that of *Anne Slack*, of ABBOTT'S LANGLEY!

That is a very serious error; because, under such an impression as this, I must appear a guilty person, inasmuch as I had no reason to doubt that she was still living. But there is no pretence whatever for such a charge, and the error only arises from an inattentive perusal of the case. One of the public journals states, that Emma Slack had represented herself “as the niece of Anne Slack, of Abbott's Langley, sister-in-law of Captain Foskett.” Not only did Emma Slack never make any such representation—at all events, to my knowledge—but there is nothing either in the will—the certificate of death—the affidavit at the Commons—the application to the Bank, or in any part of the proceedings, about Abbott's Langley, or which in any way connects the will with Captain Foskett's sister-in-law—save only the fact of the deceased having once lodged in the same street. On the contrary, the certificate describes the testatrix as of the age of sixty-eight, Miss Slack, of Abbott's Langley, being but thirty seven; and the signature to the will corresponds with that of an old lady, and was totally dissimilar from Miss Anne Slack's: besides which, the will made no mention of the stock in respect of which Miss Slack regularly received her dividends, nor was any claim made for that fund. My partner, or either of our clerks, would at once have dispelled the illusion, had the Bank asked a single question in explanation of the remarkable discrepancy in the property being *sworn under £5,000*; whilst, if the pretended deceased were the owner of both stocks, her personal property would have *exceeded £10,000*. In addition to this, a Mr. Offley wrote to us in answer to our advertisement in the “Times,” that “there was a Miss Slack at Abbott's Langley.” Bircham wrote at once in reply, that we “were quite aware of that, but she was not the person entitled.” When also Mr. Freshfield referred to my communication with Captain Foskett, I at once said that we had clearly ascertained that *she was not the party entitled*.

But although a large portion of the public has certainly laboured under the error I have pointed out, as well as other very great ones, I am under no apprehension but that you, Sir, will perceive [63] that the only question in the case is—Whether I really believed that the presumption which had been raised in favour of Captain Foskett's sister-in-law, by the isolated fact of her having occupied a temporary lodging in Smith-street, had not been completely rebutted by the positive and apparently conclusive facts as to AGE and HANDWRITING: and whether I did not really

and truly believe that the case of Emma Slack, introduced to me two months afterwards by Fletcher, was genuine.

To return to the negligence and oversights of the other men of business employed, and through whose hands the transaction passed. CHRISTMAS, *the Bank clerk*, proved that he compared the handwriting of Miss Slack, of Abbott's Langley, with the owner of the stock, and returned it to Fletcher, stating it agreed, "with a slight variation only, the letter being in rather a lighter hand;" in other words, that it appeared she was the owner. About two months afterwards he was told by Fletcher that she was not, but that he had found and produced the person who was. From Christmas's position in the Unclaimed Dividend Office, in which he was the senior clerk, he must have been privy to every step taken in Emma Slack's behalf, and to her receiving the fund; *yet he caused no inquiry to be made, nor offered the slightest obstruction*. He received, he says, from Fletcher £100 for his information. How could he consider himself entitled to receive £100 for information, when he must have seen from the will, even if Fletcher had not communicated the fact, that the claimant knew of the existence of the fund, and if legitimately entitled, could have required no information from him. The Bank, discovering that he had received this and other large bribes from Fletcher and other persons for information of this nature, suspended him; but the prosecutors at the trial most strenuously denied that he was in any way an accomplice. He may, indeed, have been an innocent man; but I submit to you, Sir, very confidently, that both from the bribe which was traced to and confessed by him, and the other circumstances I have mentioned, there were more tangible grounds for suspecting him of a guilty knowledge than myself.

The last person employed was Mr. PHILPOT, THE BROKER, a respectable man, as I have always believed. I applied to him to identify me, proposing to identify the executrix myself; but he [64] said, "Oh, I suppose you know she is the executrix?" I replied, "Certainly, there was no doubt of that, for I was present when she proved the will." "Oh, then," said he, "I will identify the lady—I do it constantly, and it's the shortest way." He accordingly identified her, and signed the usual declaration. I confess I thought it rather a loose practice; but he said it was quite customary, and was regarded as a mere form. There is no doubt that Mr. Philpot relied entirely upon me, and, heaven knows, I did not mislead him; but such reliance must have been based upon his confidence in Fletcher, who originally introduced me to him, and through whom alone I was known to him. In the course of the three years he knew me, we had never met in business more than three times, and he was never at my house or office in his life. If he, an experienced stock-broker, could without impropriety place so implicit a confidence in a comparative stranger, surely I might well do so in Fletcher.

To these instances, I must add that of MY PARTNER, Mr. Bircham, a shrewd and intelligent man, against whom no imputation has been raised, and who, having *placed himself under the protection of the prosecutors*, and given them every assistance, is pronounced to be above suspicion. But if it can be said that I ought to have known of the fraud—nay, must have done so—so ought he; he knew as much as I did of every circumstance. He knew the grounds upon which I rejected Miss Anne Slack's previously supposed identity, and entirely concurred with me in opinion. With a perfect knowledge of all these facts, he lodged the probate of the fictitious deceased at the Bank with the claim, and took an active part in advancing it; indeed, I never once attended to support it, being absent at the Kingston Assizes nearly the whole time the business was in progress.

It was proved at the trial that there was some conversation with Fletcher and the executrix about CHANGING SOME OF THE £1,000 NOTES. There may have been something said about this—I have, however, no recollection of it; but if it was talked about, the parties evidently thought it better to get this done when *I was not present*, for not a note was changed until I had done with the business.

The pertinacity with which the proof that I was present when the six HUNDRED sovereigns were received, and that they were [65] taken by me out of the office with the executrix, was adduced, and the elaborate pains taken to support it, demonstrates, I respectfully submit, the absence of any real evidence against me. I was indeed astonished to find such a point made of this, and that every exertion was strained (and perhaps successfully) to persuade the jury that I received this for my own use, there being no other evidence to ground such a suspicion than that I received it, and simply carried it out of the office for a lady who had, or pretended to have, the gout in her hands. As well might it have been imputed to me that I received any given portion of the remainder for my own benefit, having received, as is quite usual for solicitors, the entire fund,-a fact fully recorded in my diary of that day. But if any presumption could fairly arise that I received this money for my own use (and the possibility of it was, I have no doubt, one of the facts which influenced the verdict of the jury), I submit, that the facts which have transpired since my trial fairly outweigh such a presumption, if they do not entirely disprove it. These are the confessions of Sanders, the husband of Emma Slack, -the admission of Mrs. Sanders herself, and the confessions of Fletcher—all three declaring that I received only my regular professional charges, and the fact which a gentleman has lately come forward to attest, namely, that I borrowed of him £100, at high interest, shortly after this business was settled. There is also the receipt for the entire fund entered in the office cash ledger, and signed by the executrix. Besides which, I submit to you, Sir, whether my receipt of this money, and allowing myself to be seen to take it away, was not, fairly considered, an argument of my innocence for had I really known that, instead of being engaged in an honest and legitimate business, I was party to an extensive and most dangerous robbery, I should hardly have received into my possession 600 sovereigns in this open manner, when nothing would have been easier than to let the whole amount have been first received by the executrix in notes, which might have been afterwards converted and divided with the utmost facility.

It has also been urged against me, that I NARROWLY SCRUTINIZED THE TITLE of Miss SLACK, of ABBOTT's LANGLEY, BUT ADOPTED THAT of EMMA SLACK WITHOUT INQUIRY. The latter assertion is not quite correct; but I invite you, Sir, to consider the difference in the cases. In Miss Anne Slack's case I was instructed by Fletcher to ascertain, 1st, If she was the party entitled; 2nd, If she knew it; but on no account to disclose the nature or amount of the property without his express permission. This required caution, secrecy [sic], and tact; an air of mystery and reserve necessarily, therefore, pervaded my correspondence; and but too well did I succeed in accomplishing the object of my deceitful and perfidious client. With regard to Emma Slack, her case presented itself in so conclusive a shape, that there seemed no room for doubt. No inquiry was necessary, and the making of any by me, under such circumstances, would have been extraordinary indeed. Fletcher plausibly explained how he had met with the legatee (not at all wonderful as he had, or rather pretended to have, devoted two months to that object); there was the will naming the very stock; she produced a genuine certificate of her aunt's death; she was personally most respectable, and answered my inquiries without the slightest appearance of embarrassment;- not dreaming that so awful a crime as the forgery of a will had been committed, I regarded the matter as one of the clearest and simplest cases in the office. Having, therefore, introduced the executrix to our proctor, which I did from politeness to a new client and a lady, I left the business to be attended to by my junior partner and clerks, devoting my own attention to other business which required more especial care and experience. Every step in the negotiation with Captain Foskett is recorded in my diary, and regularly charged to Fletcher's account; whilst the proceedings taken for Emma Slack are all as regularly charged to her in the respective diaries of myself and partner.

In the previous narrative, I have confined myself to the case of Slack, not only to avoid unnecessary prolixity, but because, in the first, Stewart's, I received a prompt and unhesitating acquittal, in which I trust I may assume, from the summing up of Mr. Baron Gurney, the three learned Judges who presided throughout that trial fully concurred, and that the points which had created a prejudice against me in that case were fully and satisfactorily met and explained. But were it not from a fear of becoming tedious, I could adduce more additional matter to prove the correctness of that verdict. Burchard's and Hunt's cases [67] were abandoned by the prosecution. I think I am justified in saying, that they were "abandoned," not only because they preceded Slack's in order of date; but the prosecutors will, I think, not deny their previous avowal that there were but two cases in which they had a chance of convicting me, and that if I were acquitted in those, the prosecution against me must fail. It was matter of sincere regret to me, as is well known to my counsel and solicitor, that these two cases, Burchard's and Hunt's, were not taken in their order, as they would have developed my innocence in a remarkable manner. This was well known to the prosecutors; and their passing them over was only another instance of the subtle and studious calculation by which I was overwhelmed. My counsel were, therefore, perfectly sincere when, after the trial of Slack's, they urged the prosecution to try the other cases. There is, however, a circumstance which, though it could not appear at either of the trials, being separate, has, nevertheless, been much commented upon to my prejudice, and which it may therefore be proper to explain. I allude to the fact, that A DIFFERENT PROCTOR was employed in each of the four fraudulent cases. In the first, Stewart's, Mr. Potts was employed by Fletcher, some weeks before my professional assistance was obtained. In the second, Burchard's, I employed Messrs. Jennings and Cox, at the request, and upon the introduction of the brother of the latter, who at that time was my client. Having had some disagreement with those gentlemen about their bill in this and other matters, I in the next case, employed Messrs. Iggulden and Puckle, the proctors of Messrs. Scoones, during my seventeen years' clerkship.

Shortly after this, our firm became connected with Mr. Wills, from his being the proctor in an important suit, which had been before the Privy Council, arising out of the will of the Rev. George Gordon Smythe, in which we had been retained as the solicitors. We then employed Mr. Wills in all the cases that subsequently arose in the office, of which Slack's was one. Nothing, however, could more fully show what unjust and irrational inferences are drawn from particular facts, when the mind has been saturated with prejudice, than the conclusions which have been deduced from this change of proctors. Surely it would have been the course of a guilty attorney, engaged in such hazardous [68] proceedings, to have established a confidence with one respectable proctor, and to have continued with him, because he would naturally receive successive introductions of business with confidence, whilst comparative strangers would be more likely to scrutinize both the business and the parties introduced. When I retained Messrs. Iggulden and Co., they had a perfect confidence in me, from my long clerkship with Messrs. Scoones; far easier, therefore, would it have been to palm off a suspicious transaction upon them. Besides which, it may be observed, that it was only necessary to state to the proctors what was the *amount* of the property, not what *it consisted of*. I did indeed, as was proved by Messrs. Iggulden and Puckle's clerk, mention to him, in the course of conversation, that the property consisted entirely of unclaimed stock and dividends—a communication wholly gratuitous, and showing, as I submit, my ignorance of any reason for concealment.\* I may here also be permitted to mention a similar frank and unnecessary communication. A lady, named Wilkson, the wife of an old client, called at my office the day Fletcher introduced Sanders as "Thomas Hunt." She called on Mr. Wilkson's business, but I said, "I am sorry I can't stop now, for I am just going, by appointment, to Doctors' Commons, to prove a will for a man named Hunt—a lucky fellow, too, for having been at sea half his life, the first thing he learnt after his return was, that his grandmother had left him quite a little fortune in the Funds, and the will was providentially found in the care of a woman, a friend and neighbour of the deceased." I had forgotten this casual conversation, until long after my apprehension, when

Mrs. Wilkson named it to one of our clerks. With reference to the illiberal and hasty inference which was drawn from the change of proctors, I would beg to submit, that there might have been some reason to suspect a guilty motive, if a different broker had been employed to sell the stock in each of the four cases, because they of necessity knew precisely what the property was, but no such precaution was taken. In the two consecutive cases of Stewart and Burchard, I employed

\*A leading City official, who heard the whole of both trials, visited me afterwards in Newgate, and said, "My mind has not been influenced against you by any facts proved at the trial, but because you did not employ the same proctor in the different cases."

Mr. Hill. I did so from my temporary connection with him as a colleague on the Committee of the Southwark Literary Institution. Prior to Hunt's case, he had withdrawn from the Institution, and my connection with him had ceased. Fletcher then introduced me to Mr. Philpott, and I accordingly employed him in both Hunt's and Slack's cases.

It would, Sir, occupy too much of your time, were I to detail the particulars of all the cases in which Fletcher traced out the true owners of unclaimed stock and dividends, and through my professional instrumentality placed them in possession of their rights; but as many persons, who have since my trial been made acquainted with the way in which Fletcher dovetailed his fraudulent introductions with legitimate ones, have considered that they go very far to explain what has appeared mysterious and suspicious in Slack's case, I beg leave to quote two of these, which I will do as concisely as possible. The first is that of "David Smith." It was some time in the year 1840 he told me he had found a poor man, who was the eldest son of one David Smith, who had died possessed of a considerable amount of stock, and which, with the dividends, had been transferred to the Commissioners as unclaimed. A few days after he introduced this person to me, when it appeared that his father had died, leaving a will, and he referred me to the executor. I accordingly wrote to that gentleman, and afterwards saw him at my office. He said that all the property known to himself and co-executor had long since been administered. I acquainted him that the party who had brought David Smith to me was a client of mine, and had authorised me to state that he could put the executor in possession of a considerable sum to which the family was entitled, but that he would require to be guaranteed the payment of a certain per centage as a remuneration for the trouble he had taken in tracing out the owner, and as a *douceur* for his information, but which would not be required until the property was actually realized. To this the executor said there could be no objection, but that he would rather the terms should be negotiated by his own solicitors. To this I readily assented, and he referred me to Messrs. Lawrence and Blenkhorne, of Bucklersbury. With those gentlemen I accordingly negotiated terms—the property was recovered—the per centage was paid to me, and handed to

Fletcher, who paid my ordinary bill of charges and no more. I was present when the fund was distributed amongst the different members of Smith's family, to whom this money was indeed a blessing, for they were in the utmost poverty, and each paid into my hand his own quota of the per centage agreed upon with expressions of gratitude. I only wish those who have censured me for being concerned even in the most legitimate cases of unclaimed stock and dividends as unworthy a respectable solicitor, had been present at this settlement, and witnessed the good which was done by transferring from the national funds that which belonged to these poor people."

The other case, and which more resembled Slack's, was that of "George Robins, of Warwick House, Regent-street." About the end of 1840, or beginning of 1841, Fletcher instructed me to communicate with Mr. Reid, of Ripley (the uncle of Mr. Bramall, my late solicitor), who was one of the executors of the deceased, to learn if he knew of a sum of about £1,500 stock in the deceased's name, and which had gone to the Commissioners. I accordingly commenced a correspondence with him, which was continued at intervals for several months—Mr. Reid being

unwell, and I only wrote occasionally, as Fletcher reminded me of this when he saw me on other business. At length Mr. Reid called at my office, and although I entirely concealed from him the nature and extent of the property, he was so far satisfied as to refer me to his solicitors, Messrs. Smedley and Rogers, of Jermyn-street. With them I accordingly negotiated terms. An agreement was prepared, in which I inserted the name of a friend of mine as a trustee for Fletcher (who desired not to appear in it). The money was afterwards realized by the executors, who paid me a hundred guineas for the information, trouble, law charges, and some outlay. I consumed much time in this business, besides being at some expense; and Fletcher paid me £55 for my law bill, and I gave him a check for the remaining £50.

\* It has been supposed that Fletcher exacted a large sum for information to the owners of unclaimed dividends. This is quite a mistake. He never, to my knowledge, received more than a moderate quantum meruit for his labour and outlay in tracing them out. In two or three cases he expended considerable labour and money, in seeking out claimants, to large amounts, without success, and those matters were abandoned, and I heard no more of them. In five cases the true owners were found and property restored.

The letters and interviews herein were characterised by the same secrecy and mystery which had been noticed in Slack's case, until terms to Fletcher's satisfaction were arranged.

Since my trial I have heard with astonishment that there are those who have supposed that I may not have been *a direct participator* in the extensive frauds, or *a sharer in the plunder*, but that I may have CONNIVED at them. Merciful God! What suspicions and surmises obtain entrance to the mind when warped by prejudice! For this is to suppose that I became an accomplice in a fearful robbery, openly performing a series of the most dangerous acts, which I might so easily have avoided, for the common professional remuneration, my share of which was but £7. 10s., whilst Fletcher and his adept confederates, who had less at stake, and who, for aught I knew, might soon place themselves beyond the probable reach of justice, realized in Slack's case alone Four THOUSAND FIVE HUNDRED Pounds. But unreasonable, not to say monstrous, as such a supposition appears to me, it may be proper to show what my position was at this period—the comparative small value of Fletcher's business—and what my conduct was from the time of Mr. Freshfield's visit to the day of my apprehension.

I had then been seven years in practice. By no ordinary labour, anxiety, and self-denial, I had formed a connection with about 150 respectable clients. Our bills of costs for the year 1842-3 amounted to £3,350. I had a partner of wealthy connections, and with whom not a word of misunderstanding had arisen since our connection. I may truly say, it was the exemplification of a successful and happy partnership. The good understanding between us is proved, not only by his letter to the "Times" of the 11th of December, 1843, in which he declares his "*perfect knowledge of my innocence, and that a more honourable man or a better partner could not exist*," but also by his various letters to my private friends. We had five stipendiary and two articled clerks, and our connections were extending daily. Fletcher's business, though as a capitalist Bircham and myself considered him as one of a useful class of clients, was by no means considerable, his average annual business, introductions and all, not being more than a fortieth of our entire income. I was as happy as a successful practitioner could desire, contemplating and watching over the business I had formed with no common solicitude. The difficulties of a commencement having been surmounted, I indulged a sanguine hope that the object of my ambition, namely, to be the founder of a permanent and respectable firm, was in a fair way of being accomplished. Is it then a suspicion that a reasonable mind could for a moment entertain, that for the trifling remuneration I received, or to promote the villanous [sic] designs of an individual client *from whom I never received a favour in my life*, I should have risked, nay, have exposed myself to the certain forfeiture of a position so valuable,

much more to the unspeakable horrors of its penal consequences? Fletcher was not a man with whom I had the slightest private acquaintance; I never ate or drank with him; I never was at his house in my life, or he at mine, except in my office on business. Our connection was purely professional, and that rather of a cold and formal than a familiar character, as, indeed, is clearly indicated by our correspondence, and was proved by more than one of our clerks at the trial.

One of the facts most strongly pressed against me at the trial was that I refused to give up when first applied to (for it will be observed that I only declined to give it up on the *instant*) THE NAME OF THE CLIENT WHO INTRODUCED EMMA SLACK to our office. But I submit to you, Sir, whether, if I had possessed a guilty knowledge, I should not, seeing that the fraud was discovered, have secured my own protection by pointing out the only guilty party I knew. My firmness, obstinacy perhaps it may be termed, on this point, so far from protecting me, necessarily brought on me the very first attack. That my prosecution was owing to this unfortunate fidelity to a client I had every reason to believe a man of integrity, Mr. Freshfield has himself declared. Some time after my apprehension, my solicitor having thoroughly investigated my case, and satisfied himself that I was as innocent as the proctor, the broker, or either of the other professional men through whose hands the business had passed, waited upon Mr. Freshfield, and inquired if it was really intended to persist in prosecuting me, urging that I was willing to give every information in my power, indeed that I had done so when first applied to, except the name of Fletcher, which had been withheld from a belief that it would have been a violation of professional duty then to disclose it. "Yes," said Mr. Freshfield, "that's all very well; and I confess that the strong conviction you evidently have of Barber's innocence goes very far to make me believe it, but he *would not* give me Fletcher's name; *had he done so he would not have been where he is.*" There is indeed but little question that I should have been more fortunate had I really possessed a guilty knowledge, for in that case it cannot be fairly doubted that any man in such a situation would at once have secured himself by becoming a witness for the Crown. -

Fletcher has, I am told, endeavoured to make it appear that I was under obligations to him for having sometimes lent me money, but he took care to suppress the terms upon which he did so; he exacted from me interest varying from 10 to 60 per cent. for such occasional loans, according to circumstances. I have sometimes got him to discount a bill which I had received for costs, and for which he charged me 60 per cent.\* A few months after Stewart's business was settled, I with great difficulty prevailed upon him to advance me £200; but before he would consent, he put me to the expense of insuring my life as a collateral security, which I accordingly did, for his benefit, in the Sun Insurance Office, besides which he made me pay him £15 per cent.: this I continued to do until Bircham purchased a share of my business in December, 1841. Shortly after this I gave Fletcher a check for £50, with notice that I should pay off the remaining £150, unless he would allow it to remain at 10 per cent., and dispense with my keeping up the life insurance. After a good deal of hesitation, and finding that I was in earnest, and doubtless well knowing he could not have made more or so much of his money, he assented to my proposal. At the period of my apprehension I was still indebted to him in that sum, subject, however, to the bill of our firm upon him of £40, for the conveyance of the property he had purchased a few months before in Market-street, Westminster, and also subject to my general bill upon him; so that upon a proper adjustment of accounts the balance would probably have been in my favour. These are facts which he must have admitted if properly examined, and which I should have proved if permitted personally to submit

\* I. e. at that rate per annum for a few days, to meet sudden emergencies.

my books and papers. By one of his letters to me, handed to the judges in the course of my address to them when brought up for sentence on the 22nd of April, it will be seen that I had applied to

him to allow the payment of the balance due on my note to him to stand over; and that by such letter, written *about a fortnight after Mr. Freshfield's visit*, he declined to accede to my proposal, and gave me notice that he should require payment in January, alleging that he was quite short of cash, a falsehood which was clearly proved by the subsequent examination of his banking account, which showed that he had to the credit of his deposit account a sum certainly exceeding £1,000, for which he was only receiving 2 per cent. At the foot of this letter he says, "*I have heard no more of the Bank business, and I suppose you have not.*" As this perfidious man must have been expecting to hear of my apprehension every hour, and watching his opportunity to become "*evidence for the Crown*," as he since confessed to Smith he anticipated, this letter appears to have had two objects—1st, to allay any misgivings that might have arisen in my mind, by boldly requiring payment of a debt; and, 2ndly, to get some information about the "Bank business," which he must indeed have been anxious about. In reply I wrote him that the amount should be paid as he desired, and that in regard to Mr. Freshfield's inquiry I had heard no more, and supposed they had discovered their error. As I understand Fletcher's letters are in the hands of the prosecution, my letters will probably be found with them. When Fletcher by his inquiry reminded me of Mr. Freshfield's visit, I congratulated myself on my firmness in preserving a client's confidence inviolate, fully believing I should hear no more of the business, little dreaming that that client was deliberately awaiting the ruin which he must so well have known would speedily over take his victim, or that the officers of justice were (as transpired from the cross-examination of Forrester) dogging my steps day after day from morning till night. I need scarcely ask you, Sir, whether if I had known that Fletcher was making his thousands by systematic robberies, instead of a moderate remuneration for information and assistance to legitimate claimants, I should not have commanded such pecuniary accommodation as the exigencies of my business required, without paying such extravagant interest, and without being driven to such a troublesome and expensive security as a life insurance. Some explanation of my necessity for borrowing money at high interest may be necessary. At the period when I had the £200 of Fletcher, I had been disappointed in the receipt of a larger sum from a gentleman in the country, for whom I was town agent, who unfortunately failed. I had also some other losses; and the rapid increase of my practice required great additional outlay, and I deemed it wiser to borrow money, even at high interest, than to displease valuable clients by sending in their bills unasked for.

Fletcher used to require his in any particular matter—the settlement of a purchase—or the like; but although he exacted such interest from me, I had a general bill upon him of several years' growth.

Very elaborate pains were taken at the trial to prove that I had made AN ENDORSEMENT IN PENCIL UPON THE ORDER FOR PAYMENT OF THE DIVIDENDS to the executrix, showing how the amount was to be paid. The learned judge remarked, that this was the only act which had been proved to be done by me *that did not fall within the regular province of a solicitor*. This is one of those acts from which different minds have drawn conclusions diametrically opposite; but I confidently submit, Sir, to your enlightened and candid mind, whether this was like the act of a guilty or an innocent man. My client was a lady—from the gout in her hands she could only write with difficulty, as her various signatures indicate—I inquired how she would prefer to receive the money, and endorsed the order accordingly. Is not this just what an ordinary person in common politeness, still more her solicitor transacting the entire business, would do, perfectly confiding in the legitimate character of the business, and precisely what he would cautiously abstain from doing if he entertained the remotest suspicion to the contrary?

But, Sir, if anything further be necessary to demonstrate my implicit faith in Fletcher's integrity, and in the proper character of the business he had introduced, it must surely be considered as conclusively furnished by my conduct from the time of Mr. Freshfield's visit to that of my



apprehension, a period of twenty-four days. Day by day I was laboriously occupied in the multifarious duties of an extensive practice.\* The prosecution know well that no attempt was made to *escape*, and it must be almost as evident to them that not the slightest preparation was made for *defence*. For the latter, two things were indispensable, viz the *papers* in the different matters, with the books in which the letters and other entries were made, and an adequate supply of *funds*. I neither secured the one, nor made the least effort to provide myself with the other. At this period there was due to our firm not less than £2,000 for book debts, and about £1,500 to myself prior to the partnership. To the firm there was due in one sum £330 for principal, interest, and costs, and which was about to be paid off. I took no steps to hasten its payment or secure the receipt of it by myself: it therefore fell into Bircham's hands a short time after my apprehension, who refused to apply a shilling of it in my defence, being advised, he said, by "his friends," to retain it, to meet claims "that *might* be made upon the firm." My personal credit, at this time, was good, and that of our firm was high; but, during the interval of twenty four days, when I might so easily have raised £500 or £1,000 to resist the fearful attack that was preparing against me, I neither applied for a single debt due to myself or the firm, or attempted to borrow a single pound, although the balance at my bankers+ was at the lowest ebb, there being but £30 due to me when apprehended. As to the papers, they were not so much as referred to since I submitted those of Slack to Mr. Freshfield *they all continued in the places where they were severally deposited when the respective matters were settled*; the consequence was, that the prosecution selected whatever they pleased for the support of the charge against me, suppressing those which would have proved my innocence; and my partner and his friends (as they assumed to be) carried off the remainder. I was thus put to the greatest possible inconvenience. When my Solicitor applied for them to Mr. Freshfield, he referred him to Mr. Bircham. Bircham was never to be seen by my solicitor -

\* It is known to my clerks that, upon the very day Mr. Freshfield called, I was engaged in my office, from nine in the morning till midnight, preparing for the trial of a cause, which occupied me in court the next day, from nine in the morning till half-past seven in the evening.

+ I banked with the Bank of England, so that the prosecutors had abundant facilities for investigating my pecuniary affairs.

in vain did he inquire for him, in vain did he write for an appointment with him. He was not to be seen by any person concerned for the defence, although he was in constant personal communication with the prosecutors. After great difficulty and endless applications, my solicitor did get some books and papers from the hands of Mr. Bircham's friends, but the most important were either withheld, lost, or mislaid; and here I am constrained to advert to Bircham's conduct, although, heaven knows, I have no vindictive feeling towards him or any man living. Full well he knew my innocence—most solemnly had he declared it; and with equal solemnity did he pledge himself to assist me to the last in my cruel position. But in the face of all this—under the influence (as he himself declared) of "friends," who had no personal knowledge of me or my character, and who, I will take the liberty to say, gave him advice as impolitic as ungenerous, he not only deserted me, but became the facile instrument of the prosecution. His evidence, however, did not answer their purpose, for they not only kept him out of the witness-box, but (acting under their instructions, as I have every reason to believe), he kept entirely out of reach until the trial was over. His heartless advisers appear to have conceived the notion, that by my destruction, and his securing, as he did, all the books and papers, he would also secure the entire practice. I was shocked to hear that he said, "he had no doubt I should be acquitted, but that it would be better for him if I were transported!" His better feelings will, however, I am persuaded, sooner or later, be aroused, when he will sincerely regret his ungenerous conduct towards me.

Of course, when I was in prison my credit was stopped, and those indebted to me, not knowing what course affairs would take, demurred to paying me. I was unwilling to sacrifice my books and furniture by a sale, believing that as the facts became better known to the prosecutors, I should be released: they thus fell a prey to my panic-stricken landlord and other creditors—not a single article was saved to me—my books, scientific instruments, and articles upon which I set an especial value, were all swept away;—in a short time the small sum at my command was exhausted. I became literally penniless, and, but for the generosity of a few steadfast friends, I should have been driven upon the gaol allowance long before my trial. I lost my counsel, Mr.

Chambers, because I could no longer pay him his five guineas per day for attending the almost endless hearings. My solicitor next declared that, in justice to his family, he could no longer devote his time to my service without suitable advances. In this deplorable condition, another gentleman (with a generosity, for which I shall ever be grateful) came forward and offered to devote his personal labour, but naturally observing that he could not undertake to provide the outlay. He mentioned my condition to Mr. Parry, a talented gentleman, just called to the bar, and who, recollecting me as the secretary of “The Legal Discussion Society,” and more recently as an active member of the Committee of the “Southwark Literary Institution,” at once offered to attend for me before the Lord Mayor. I was then reduced to the most humiliating appeals for the means of existence, and to provide for the indispensable current outlay; but such was the prejudice which false, distorted, and ex-parte representations created in the public mind, that even my friends became lukewarm, and the subscription was less than I had many a time procured for a distressed family in a few hours, and from entire strangers. The consequence was, that much important evidence from Bath, Bristol, and other places, was not obtained—the procuring of subpoenas was delayed so late, that some witnesses were not secured, and even the copies of the depositions were not had in sufficient time to obtain full and proper advice upon the evidence.

I had retained Mr. Thesiger, but the payment of his fee was impossible. Mr. Wilkins was made acquainted with my forlorn situation, and most magnanimously consented to receive my papers, with a very inadequate fee. Most unfortunately, too, my solicitor was prevented by illness from attending the trial, and thus I lost the great value of his superintendence, as well as his very important evidence.

These, Sir, are facts, which, if not already known to you, may be distinctly ascertained, and can you or any rational man believe that I should have left myself thus destitute, with *ample means of preparation* prior to my apprehension, if I had believed that a forgery had really been committed.”

\* Only two days before my apprehension I had paid away a large sum of money to a client of the excellent gentleman who now gratuitously acts as my solicitor. He was led to watch my case from the belief that I could not have known danger was before me, or I should never have left myself in necessitous circumstances.

It only remains for me to advert to the CONFESSIONS AND DECLARATIONS of THE FOUR OTHER PRISONERS. *Fletcher*, who projected the frauds, and under whose superintendence and direction they were executed, has done me the niggardly justice to declare my perfect innocence; the genuine character of that declaration is better proved by the documents accompanying this memorial than by any assertions of my own. *Mrs. Dorey*, when first apprehended, unreservedly declared my innocence to her medical attendant, Dr. M'Murdock, at the Compter. In her subsequent confession, however, in which she was seeking immunity for herself by assisting the prosecution, she evidently seeks by insinuation to implicate me, but her inability to do this is equally clear from the entire absence of a single fact tending to do so; and this, although she was not only *Fletcher's* active confederate in all these frauds, but had been most intimately acquainted with him for years before it was my misfortune to know him. It will be

remembered, too, that she originally instructed Mr. Wilkins, as her counsel, and who attended before the Lord Mayor for her, until he became indignant at the misrepresentations she made to him (through her solicitor) in reference to his lordship. With a full knowledge of all Mrs. Dorey's disclosures, Mr. Wilkins accepted my defence, purely from a belief of my innocence, a belief which he not only solemnly declared in court, but which, since the trial, he has publicly repeated, and has by a series of acts abundantly proved the sincerity of his declarations. *Mrs. Sanders* (Emma Slack) has always avowed my innocence. The declarations of her husband, *William Sanders*, have been made with a consistency, and other circumstances, to which I would beg, Sir, to draw your particular attention. It will be seen by his and Fletcher's confessions, and more particularly from Mrs. Dorey's, that he was an active accomplice of Fletcher's; that he personated the claimant in Hunt's case; and that in Slack's, in which his wife represented Emma Slack, he was an active though secret confederate. When the news of my apprehension was first published, he and his wife immediately took flight together; he communicated, however, with his solicitor, Mr. Harmar, of Bristol, instructing that gentleman to endeavour to negotiate terms for his surrender, ADMITTING HIS OWN GUILT, AND DECLARING IN THE MOST UNQUALIFIED TERMS MY INNOCENCE. When brought to the Compter, he was in an agony of distress; he then said to Dr. M'Murdock, in the presence of a turnkey, "*I am a guilty man, but there is one here, though almost a stranger to me, I know to be as innocent as a child unborn, and that is Mr. Barber.*" "But," said Dr. M'Murdock, "he received your wife as Emma Slack." "Yes," replied Sanders, "and he knew no other." To this the doctor replied, "*Well, Mrs. Dorey told me he was innocent.*" After his committal to Newgate, Sanders repeated this declaration to the chaplain, and subsequently to many of the officers of the gaol. Whilst confined at Millbank, he repeated this declaration to the chaplain, and to other persons there, communicating many circumstances in verification of his statement; finally, on board the Lord Auckland, he made the full and written declaration subjoined hereto: this was entirely without any concert with me, for although the Agincourt and Lord Auckland lay side by side for ten days, neither I, nor, to the best of my knowledge, had any of my friends any communication with him, direct or indirect.\* Of the genuine character of his declarations I do not suppose any doubt can be entertained, and considering that he is the husband of the pretended Emma Slack, and was acting with Fletcher in that matter even before it was introduced to me, I do not think any reasonable mind will doubt that he must be a competent judge of my guilt or innocence. I think I am, therefore, justified in saying, that ALL THE FOUR PARTIES WHO DESIGNED AND EXECUTED THESE FRAUDS, WHOSE INSTRUCTIONS I RECEIVED, AND BY WHOSE EVIDENCE ALONE THE PRESUMPTION RAISED AGAINST ME COULD BE COMPLETELY REBUTTED, HAVE, WITHOUT CONCERT WITH ME, OR WITH EACH OTHER, AND WITHOUT A VIEW TO THEIR OWN BENEFIT, BUT IF ANYTHING TO THEIR PREJUDICE, AT DIFFERENT TIMES, AND UNDER DIFFERENT CIRCUMSTANCES, SOME BEFORE AND OTHERS AFTER THE TRIAL, EXONERATED ME FROM ALL GUILTY KNOWLEDGE WHATEVER.

\* See also his official examination at Hobart Town.—P. 87.

This prosecution has driven me from honour, happiness, and the brightest prospects, to ruin, disgrace, and misery, almost insupportable; still it may, in some measure, have been brought upon myself by my reliance upon the integrity and veracity of the deceitful and hypocritical Fletcher, and the unflinching firmness, contumacy perhaps, with which I withheld his name. The verdict too may be justified by the *ex parte* evidence upon which it was founded; but I humbly submit, that although I have no legal remedy by which I can extricate myself from the horrible situation in which a train of unfortunate circumstances, almost unparalleled, have placed me, that the facts which have *transpired since my trial* have so materially altered the complexion of my case, that I may fairly and reasonably approach her Most Gracious Majesty, and pray for the speedy exercise of her

beneficent prerogative. Permit me to remind you, Sir, that *not a single fact incompatible with my innocence was proved*. I was convicted *upon suspicion only*, and undoubtedly circumstances were proved, which, unexplained, formed a case of grave suspicion; but you will at the same time perceive, Sir, that they were of a nature which it was scarcely possible to rebut or explain, except by those for whom I acted. That at least some of the jury must have felt considerable hesitation in pronouncing me guilty, I think must be inferred from the delay of an hour and a half before they could agree upon their verdict; and, without imputing to those gentlemen any peculiar prejudices, I may venture to observe, that no person was less likely to receive the benefit of a doubt than an attorney.\*

One fact of great importance, as accounting for, if not wholly justifying, my withholding Fletcher's name, is the fact that he was my client. Although this was admitted by Mr. Erle, in his opening, the learned judge held that I was not entitled to the benefit of the admission, as it was not formally proved. It is, however, sufficiently manifest, not only by his confession, but by the correspondence which I set out in the Memorial I had the honour to transmit to you from Millbank, in May last. The confession of Mrs. Dorey I never saw until it was handed to me by a prisoner on board, shortly before my arrival on this island. Although, as I have observed, that document was framed in no friendly spirit towards

\* See the retractation of their verdict, p. 129.

me," it will be found to confirm, as far as it goes, every fact set forth in my Millbank petition.

In this Memorial I have endeavoured to address myself to every point urged against me at the trial, and which may seem to require explanation; and I humbly hope, Sir, that, precious as your time is, that you will favour my statement, and the documents by which it is supported, with your patient consideration. If this be done, I do feel a sanguine hope, that you will be satisfied that I am indeed innocent of the charge for which I am suffering. When at Millbank I earnestly prayed to be allowed personally to submit my books and papers to the prosecutors, and to explain not only the circumstances which had been urged against me, but any others that might have influenced the minds of those by whom the prosecution was conducted. I trust, therefore, that no new *ex parte* statements, which I have now no opportunity of answering (although I am totally ignorant of any such) will be permitted to influence your mind.

If it should still appear to you, Sir, that I have betrayed in this unhappy business any degree of negligence, or error of judgment, allow me to remind you, that *not one of the parties innocently connected with it can be wholly absolved from a similar charge*, and that I have already paid a fearful penalty for it—not only in the wreck of property, connection, and a position of honour and happiness, but by mental and bodily sufferings of no ordinary kind. For four months I was a prisoner at the Compter, for three weeks at Newgate, for two months in the gloomy abode at Millbank, for four months in that horrible dungeon, a convict prison ship, and here I am doomed to the most degrading and loathsome labour, with food that scarcely sustains nature. I am now in the hospital, and in so reduced a condition, that it is extremely doubtful if I shall be alive when the result of this appeal shall be brought to this scene of misery; but if my life should be spared, I shall then have endured two years of imprisonment, illness, degradation, and wretchedness in every form. +

\* It was made in the presence of the solicitor for the prosecution, whose recommendation to mercy was her only hope.

+ The miserable circumstances under which this Memorial was prepared, and the wretchedness of my condition in Norfolk Island, will be seen by a paper in Dickens's Household Words, No. 124, entitled "Transported for Life."

In praying for the restoration of my liberty, it will perhaps not be regarded as impertinent, if I show that whilst by unwearied industry I acquired for myself an honourable position, and one of still greater promise, I was not indifferent to the welfare of others and the general progress of society. Immediately prior to my leaving Tonbridge, I projected and established a popular Literary and Scientific Institution there. In London, I projected and established "The Legal Discussion Society," of which I was afterwards elected honorary secretary and treasurer. For the six years prior to my apprehension I had been an active member of the committee of the "Southwark Literary Institution." I had also the honour to co-operate with Lord Brougham and the late Dr. Birkbeck in founding the "Adult Instruction Society." At the suggestion of some benevolent persons I became the honorary secretary to "The Builders' Benevolent Institution," to which, upon my personal application, the Marquis of Westminster became the patron. I prepared a code of laws for its government, and performed a mass of initiatory labour for this infant charity. Those who know me can also bear witness to my prompt co-operation in every philanthropic object, to the utmost of my slender means and humble abilities. The respectable gentleman to whom I served a continued clerkship of seventeen years attended my trial, and proved that during the whole of that period my conduct was most exemplary. The unblemished character which I have since borne, both as a member of society and of my profession, was proved upon the oaths of numerous witnesses—barristers, solicitors, merchants, and other gentlemen of rank and character.

In the earnest hope that you will be pleased to submit my case to the favourable consideration of her Most Gracious Majesty, as one deserving the exercise of her blessed prerogative, and that I shall be restored to that society whose laws I have never in the slightest degree offended, and of which, though a humble, I have not been altogether a useless member, I have the honour to remain, with profound respect, Sir, your most obedient and very humble servant,

WILLIAM HENRY BARBER.

To the Right Honourable Sir J. R. G. GRAHAM, Baronet, &c. &c.  
Norfolk Island, 10th December, 1844.

## Appendix 35 Comparison of Versions of Memorial from Norfolk Island

### PART 1. MEMORIAL.

To THE RIGHT HONOURABLE SIR J. R. G. GRAHAM, BARONET, Her Majesty's Secretary of State for the Home Department, &c. &c. &c.

SIR,—I once more crave leave to address to you my humble petition. It is scarcely necessary to remind you that I am the Solicitor who was convicted on a charge of uttering a will of one Anne Slack, knowing the same to be a forgery. Of such guilty knowledge, as of all participation in or criminal connection with the fraud effected by such forgery, I most solemnly assure you, Sir, I am wholly innocent.

Whilst a prisoner at Millbank, I had the honour to transmit to you a Memorial, embodying the circumstances of my unfortunate case; but, from the distracted state of my mind at that period, the statement was, I fear, exceedingly imperfect. Permit me, therefore, now to submit a narrative, which I trust will be found to embrace every material feature, and to which, as well as to the subjoined declarations and confessions made since my trial, I humbly but most earnestly entreat the favour of your patient attention.

I was articled to those eminent and most respectable Solicitors, Messrs. Scoones, of Tonbridge, with whom I continued seventeen years, when I left to practise on my own account, having received from those gentlemen a highly commendatory testimonial. After a few months' residence at Brighton, devoted to study and preparation, I (in 1837) established myself in London. About eighteen months afterwards, Fletcher called at my office, inquiring into the validity of a claim which a client of mine had preferred to a portion of the Angel Estates, and who had applied to him to advance the necessary funds.

I told him I considered the case hopeless, and dissuaded him from the loan which he had contemplated. Upon inquiry of a client, who called at my office a few days afterwards, I learned that he was a retired surgeon, and that he was living in a house of his own, and was, besides, possessed of considerable landed property; in fact, an affluent and, ostensibly, most respectable man.

A few months afterwards he consulted me upon a dispute with one of his tenants; and from that time to the moment of my apprehension, I continued to be his ordinary solicitor. His business consisted of the preparation of agreements with his tenants, the adjustment of differences between them, and the occasional investment and transfer of his capital. In deportment, he was reserved but gentlemanlike.

When I had been concerned for him about a year, he introduced to me an old and infirm, but respectable-looking woman, as “Miss Stewart,” who represented herself as the sister of one John Stewart, who had died, leaving some money in the funds. Administration had been applied for, but finding the aid of a solicitor necessary, Fletcher introduced the claimant to me. The Commons being convinced of her identity, administration was granted, and the Bank, being also satisfied, she obtained the fund. About this period, Fletcher told me that he had the means of obtaining information at the Bank as to the amount of stock and dividends unclaimed, and that he

devoted a portion of his time to tracing out the owners, with a view to a liberal remuneration for his trouble; but, in order to secure such remuneration, an agreement was necessary, which he should sometimes require me to prepare. I continued his solicitor about five years, in the course of which he traced out several of the true owners of this kind of property, and through my professional instrumentality placed them in possession of it. But, during the same period, he also introduced four different persons, apparently having no connection with each other, and at intervals of about a year, who claimed and procured a large amount of property (by means of false personations), to which they had no real title.

These cases were brought into the office precisely in the same way as the genuine cases; and as appearances were preserved, and every precaution was taken with consummate subtlety, - and, above all, as I placed implicit reliance on Fletcher's integrity, - not the slightest suspicion of fraud ever occurred to my mind. In speaking and writing to me about them, Fletcher affected to regard them as the most ordinary and legitimate business, frequently writing a long letter on different matters of his own and genuine bank cases, and in the same communication referring to and giving me directions in these fraudulent transactions. The first fraud was Stewart's; the second was a case of Burchard's; the third, Hunt's; and the fourth, Slack's. It was in the last that detection occurred, and which led to the discovery of the rest. The circumstances of Slack's case are as remarkable, as the means adopted were crafty and iniquitous. They require far more attention than I believe has ever yet been paid to them, in order truly to understand the part which I have taken, and the means by which my faith and confidence were obtained, and whereby I was so effectually and fatally misled. I will state them as perspicuously as my enfeebled energies will permit.

In the autumn of 1842, I first received Fletcher's instructions in this matter. He said there was a sum of £3,500 stock in the name of "Anne Slack, of Smith Street, Chelsea;" that he had ascertained there was a lady of the same name living with Captain Foscett, of Abbott's Langley, and he requested me to communicate with the captain, to ascertain *whether she was the party*, and if so, if *she was aware of her rights*; but *on no account to disclose the nature of the property without his express authority*; - hence the correspondence of myself and partner with that gentleman, and my subsequent interviews with him and his solicitor. In the course of this negotiation, I learned that the lady had once lodged in Smith Street, Chelsea, a circumstance which raised a strong presumption of her identity; but, unfortunately for me, the statement as to the residence was accompanied with another, which raised a much stronger presumption that she was not the party; namely, her age. The captain, either from some delicacy (a most unjustifiable and calamitous one) about the age of an unmarried lady, or some other motive, represented her as only *twenty-seven* years old, whilst, in truth, she was *six, or seven and thirty*. I made some other inquiries of the captain, but without eliciting any fact which raised the least presumption of his sister-in-law's identity, beyond her temporary lodging in Smith-street.

The particulars thus collected, I fully reported to Fletcher, especially the two facts as to the residence and age. He said, "It is hardly possible she can be the party, as the owner of the stock had executed a power of attorney twelve years before, which Miss Slack, of Abbott's Langley, could not then have legally done, she being then a minor; but," continued he, "if you can obtain her handwriting, I will have it compared with the signature at the Bank, which will effectually determine the question." I accordingly applied by letter to Captain Foscett for it, and his solicitor subsequently brought me a letter written by the lady. This I enclosed in a letter to Fletcher; and it was in this important stage of the inquiry where he grossly deceived me. In a few days he brought the letter back, stating, "*It is now quite clear that this lady is NOT the party entitled, as the owner of the stock writes a large stiff hand, like an elderly person*, whilst this lady writes the usual fine running hand of a young lady." He added, "that Miss Slack, of Abbott's Langley, held a sum of £6,000 stock, but that the signature to that and the £3,500 were totally dissimilar; - in fact, that the writing of this young

lady was as unlike the writing of the owner of the unclaimed stock, as ordinary writing was unlike print." At the same time he made this report, he handed me what he said was an extract from the letter of his friend at the Bank, but without leaving me the letter itself, which confirmed his report. I therefore concluded, without doubt, that although it was certainly a remarkable coincidence that two ladies of the same name, and both holders of funded property, should have resided in the same street, yet that the statement of Captain Foskett as to the *age*, and the report of Fletcher upon the *writing*, united in satisfactorily proving that the sister-in-law of the former had no connection whatever with the unclaimed fund. I accordingly wrote to Captain Foskett's solicitor to that effect, returning his client's letter. I remarked to Fletcher on the singular coincidence of two separate holders of stock of one name and who had resided in the same street. He said, "It is not so very extraordinary, as Smith-street is one in which many persons live for a season only, and then remove; and Slack is by no means so uncommon a name as you suppose, there being a great many in the Bank books" I most implicitly believed his report, not only from pre-established confidence in himself, but because I was in some measure prepared for a result unfavourable to the lady's identity, from her brother-in-law's statement as to her age. Moreover, I believed that Fletcher was, as he affected to be, chagrined and disappointed, that after so much trouble, he had failed to discover the true owner.

My partner and I talked over this business as of the other matters in the office, and particularly the result of this inquiry, and we both thought that the presumption which had been raised in Miss Slack's favour by the fact of former residence merely, was completely rebutted by the apparently conclusive facts as to age and writing. All idea, therefore, of this lady being entitled was wholly dismissed from both our minds.

Fletcher expressed himself exceedingly disappointed, but said he should resume his inquiries for the right party. A few days afterwards he wrote us a letter, expressing his intention of going to *Bath*, as he had reason to suppose, from the death of a lady of the name there, that the owner might be heard of in that quarter.

After his return, he called in my absence at our office, and left a copy of the "Bath and Cheltenham Gazette," in which he had inserted an advertisement for the representative of "Anne Slack, formerly of Smith-street, Chelsea," and referring parties to Barber and Bircham.\* [\* This Memorial was prepared in the absence of all my books and papers, but its accuracy is now verified by affidavit filed in the Court of Queen's Bench. The entries in my diary are now given at p. 124.] In answer to this advertisement we received a letter from a Jane Slack, of Bath, stating that she was the niece of Anne Slack, and pretending to have a claim. This we answered. Shortly afterwards we received a further letter, in which the writer stated that she was satisfied she could not be the party inquired for. Upon a careful consideration of this correspondence, after my apprehension, a suspicion arose in my mind that it was fictitious, and my solicitor accordingly went to Bath and inquired for the writer, when he discovered that she was no other than the identical EMMA SLACK and that she had taken lodgings merely to have our answers to her letters received there. The villanous subtlety of Fletcher thus became evident. Instead of Bath being the object of his journey, it was Bristol, the residence of Sanders and his wife, where the remainder of the plot, and the details by which my eyes were to be blinded, were doubtless arranged. If, Sir, you will take the trouble to refer to the "Times," of the 23rd April last, containing my address to the Court, or to my memorial addressed to you from Millbank, it will be seen that the letters of this pretended Jane Slack were *regularly sent to Fletcher, and that at the same time he affected to me to have no knowledge of her whatever*. One of the numerous and extraordinary unfortunate circumstances to which I became the victim, was the illness of my solicitor at the time of my trial, whereby I not only lost his important services, but his evidence of the result of his inquiries at Bath. From Sanders' information since the trial, it appears that he had, by agreement with Fletcher, registered the death of one Anne Slack, at Bath,



some time before the taking of the lodgings there, but when a certificate was applied for, there appeared to have been an error in the entry, and that Fletcher and he then determined to register a death at Pimlico, which accounts for Jane Slack's somewhat abruptly breaking off her correspondence with our firm. From the middle of January, when the communications with Captain Foskett terminated, to the early part of March, Fletcher pretended to be exerting himself to trace out the true owner of the stock. It was then I suggested that an advertisement in the "Times" might produce the party. He assented to this, and one of our clerks prepared such an advertisement and got it inserted. Several persons applied in consequence, but Miss Slack's (of Abbott's Langley) friends took no notice of it. A letter was, however, sent us by a Mr. Offley, intimating that there was a lady at Abbott's Langley of the name. *Mr. Bircham wrote in reply, that we had ascertained she was not entitled.\** [\* See Copies of the Entries in my Partner's Diary.—P. 126.] A few days afterwards, i.e. on the 15th, Fletcher called, and said, that after failing in all his previous exertions, he had at last met with the real owner by the merest accident. He said, that whilst superintending some repairs of a house he had recently purchased at Westminster (the conveyance of which we had prepared), he got into conversation with one of the workmen, and finding that he was a Chelsea man, he inquired if he knew anybody of the name of Slack there; that the man then referred him to a house at Chelsea; that upon inquiry there he was referred to No. 7, Francis-street, Tottenham Court Road, where he found a highly respectable woman, who was the niece of the owner of the stock. He said he was quite satisfied of the identity of her aunt, as he had procured a fac-simile of the signature to the will, and had it compared with the Bank books, and they tallied exactly. I congratulated him upon the lucky incident which had led him to the owner; but he said, with a shrug of well-feigned disappointment, "Yes, but I shall gain nothing by it, as she does not require my information." I said she may not be aware of her right to this particular stock. He said "Oh, yes she does, as it is expressly named in the will. But," said he, "she does not appear to be particularly connected with a solicitor, and I will recommend to her your firm." I thanked him; and the next morning he introduced her as "Miss Slack." She was dressed in black, and was very respectable in appearance. She produced the will, and I particularly noticed that the signature *exactly corresponded with the description Fletcher had originally given me of that in the Bank books*, being like an old lady's, and the very opposite of Miss Slack, of Abbott's Langley. At the same time she produced an official copy of the registration of her aunt's death at Pimlico, by which it appeared she had died in the previous February, of gout in the stomach, aged 68. I made some inquiries about the deceased, which this arch imposter answered with great readiness. She said she should have proved the will before, but she had been ill; which statement seemed quite borne out by her delicate appearance. She was studiously disguised, wearing light ringlets (her natural hair being black), and complained of gout in her hands and feet, so that she could only walk with difficulty. From the precision of dress and stiffness of her air and manner, she had all the appearance of being, as she represented herself, an unmarried lady, and was about five-and-thirty years of age. She professed to treat my services as somewhat superfluous, observing that it was rather a proctor's business. I said it certainly was, and that the aid of an attorney was not absolutely necessary. Fletcher then remarked, that as the dividends of the £3,500 had been transferred to the Commissioners for the Reduction of the National Debt, he would recommend her to avail herself of my professional assistance. She asked what our charges would probably amount to? I answered, about £10. She said, if they were not likely to exceed that, she would be glad if I would attend to the matter for her, as she was not accustomed to business. I told her that she would have to advance the probate duty, which would amount to £80. She said she was not immediately prepared with this, but had no doubt she could borrow it. Fletcher then said that as the business would now be in my hands, and I was his solicitor, he would advance it, if she would authorize me to retain the money for him. To this she assented, and he gave me a check for the money. I then accompanied her to Doctors' Commons, where she proved the will in the usual way. It was attentively perused by our proctor, who administered the customary oath, without making any remark upon it. I remember saying to Fletcher, he might as well accompany us to Doctors' Commons, but he said that as his

presence was not required, he must attend to some business of his own. After the will had been proved, the sham executrix took a cab, directing the driver to conduct her to 7, Francis-street. Upon receipt of the probate from our proctor, *Mr. Bircham prepared the application to the Bank* for the stock. This being signed by the pretended executrix, he lodged it with the probate at the Bank; and, after several inquiries, sometimes made by himself, and at others by a clerk, he learnt that the stock had been transferred into the name of the executrix. He accordingly apprised her of this by letter, as well as Fletcher. Whilst this part of the business was in progress, I was much engrossed by the business of the Spring Assizes, and was absent on the Home Circuit about ten days, during which Bircham superintended the business. On my return I found that Fletcher and the pretended Miss Slack had severally called at the office complaining of delay. Accordingly, upon learning from Bircham that the matter was ready for settlement, I directed a clerk to make an appointment for Miss Slack to attend and settle, and for Mr. Fletcher to attend and receive his £80. She came on the 7th of April, when I accompanied her to the Bank. After passing through the usual routine, and her signing all the necessary books, she received the stock and dividends, amounting to about £4,600. In the course of this, a circumstance occurred which I think you will allow, Sir, was most unfairly pressed against me at the trial to prejudice the jury, namely, that £600 of the fund was obtained in gold, and that it was delivered to me. The simple fact was, that being with the executrix, and she having, or professing to have, the gout in her hands, I carried this weight of gold for her till she got to a cab. Fletcher met us in the rotunda of the Bank, and afterwards attended our office to receive his £80. When this was done, she paid him £5 for the use of it and his trouble, which he received with a well feigned appearance of dissatisfaction. Our law bill was £13, for which she handed me £15. All the money—the £4,600—was counted over, and she signed the usual receipt for the whole amount, in a cash account entered into the office ledger. In signing her assumed name, “Emma Slack,” she appeared to have great difficulty in writing, but which it has since occurred to me was probably affected, lest I should recognize the writing of the Jane Slack, of Bath. This being settled, and Fletcher having offered to accompany her to a cab, they left our office, the executrix having the funds in a bag. From that moment I never saw or heard of her until some time after my apprehension, when I was told that she was a Mrs. Sanders, a name that was never breathed by Fletcher or herself during the whole of the business.

I think, Sir, you will perceive how easily any solicitor might be deceived by such conduct as I have described, especially placing, as I did, implicit reliance on Fletcher's integrity. Throughout the transaction, Fletcher affected much mortification that he should have lost the benefit of communicating the secret of the unclaimed stock to the proprietor. He had ample means of obtaining confidential information from the Bank, and in the course of this business he called and told my partner, and afterwards myself (as appears from our respective diaries), that the Bank had in error entered the two Miss Slacks “deceased” in their books—i.e., Miss Slack, of Abbott's Langley, who was the owner of the £6,000 stock, and the old lady of Pimlico, Emma Slack's aunt, so that when the former went to receive her dividends, she would find herself so entered, and some difficulty or confusion might arise. I observed to him, as our knowledge of this error is only through you, we cannot set them right. “Oh, no,” said he, “my friend will see to that; I am surprised they should have made both parties “deceased,” even though they consider them to be one, it is not their usual practice.” Whether he endeavoured to get Christmas to alter the books and failed, or whether Christmas promised to do so, and either forgot it or found it impracticable, I have no means of judging; but, unless he supposed the books to have been altered by Christmas, he must certainly have been in great anxiety—seeing that the Bank had, contrary to his expectations, made Captain Foskett's sister-in-law “deceased.” From his admission to Smith, and his whole conduct, it is now evident that he calculated, that if the fraud were detected (and which it was almost certain to be), he should escape by becoming “*evidence for the Crown*,” as he had throughout acted with extreme caution, and had studiously avoided any overt act. This caution, though very apparent upon

a review of his conduct, did not particularly strike me at the time, as there was no necessity for his attending at Doctors' Commons, or before the authorities at the Bank; and there was a very good reason, or rather plausible pretext, assigned for some precaution, namely, that his appearing in Bank matters might lead to the disclosure of his connection with his friend there. He was equally reserved and guarded in Robins, Smith's, and other genuine cases.

After the settlement on the 7th of April, the business had entirely passed from my mind, until the 15th of November following, when Mr. James Freshfield called and inquired about it. I immediately showed him all the papers, and gave him every information I possessed, except the name of the client who had introduced the executrix. I told him that I was under a strong impression that his inquiry arose from some error in the Bank books, and therefore declined to furnish the name of a client who might be exposed to annoyance erroneously: at the same time I said, if he would communicate with me again in a day or two, I might feel at liberty to give the information he pressed for. He then left, and I wrote Fletcher a letter, of which I think the following is a literal copy: [\* I have since compared it with the copy given in the brief to counsel, and find it verbatim.] —

“15th November, 1843.  
(Wednesday.)

“DEAR SIR, - I have received a communication from the Bank, in reference to which I shall be glad to see you. Tomorrow I have a cause to try, but on Saturday, if you will call, I shall be at the office.—Your's faithfully, -

“J. FLETCHER, Esq.”

“W. H. BARBER.”

He came on Friday, when I acquainted him with the particulars of Mr. Freshfield's visit. He said, “You ought not to be surprised at that, after my having apprised you of the mistake which had been made in the Bank books—the inquiry is precisely what I expected—but the error will be put right, and you will hear no more of it.” I said I had no doubt that it was so, but it would be satisfactory to know that the mistake had been found out and corrected, and I would ask Mr. Freshfield if it had been done. He, however, dissuaded me from this, observing, “It will only afford him another opportunity of probing you, to learn, if possible, from whom the information was originally obtained about the stock; but I know all that is doing at the Bank as well as Mr. Freshfield does, and that the error will be soon corrected—depend upon it, you will hear no more of the matter.” I certainly felt no anxiety, believing that if the mistake (which I firmly believe had been made) were not corrected, that further inquiry would be made by Mr. Freshfield or the authorities at the Treasury. Unfortunately, no further inquiry was ever made, and becoming engrossed with the multifarious concerns in the office, the matter quite passed from my recollection until the 9th of December (twenty-four days after Mr. Freshfield's visit), when I was apprehended on my way to my office, shortly after nine o'clock in the morning. I was taken direct to the Mansion House, when I was immediately searched; my pocket book and other papers, with the keys of my office desks and drawers, were taken from me. I wrote notes for my partner and managing clerk, Mr. Price, which I delivered to Forrester. I was kept close prisoner until one, and my urgent request to be allowed to send again for my partner or counsel was refused. About half-past one, Forrester returned with my partner and Price—the notes having been kept back until my office had been thoroughly ransacked. Bircham, knowing all about the business, naturally expressed his astonishment at the position in which I was placed, observing, “if you are guilty, I am guilty, but of course you will soon be discharged, Fletcher will at once explain it.” We determined he should instantly fetch Fletcher. He had no sooner left for this purpose than I was ushered into the presence of the Lord Mayor, without counsel or other assistance, although Mr. Clarkson, Mr.

Freshfield, with his clerks, and a body of witnesses, were all arrayed for the prepared attack. Mr. Clarkson suggested that I should be remanded, without examination, till Thursday; but as I must remain in custody (bail being refused) meanwhile, which would very seriously have prejudiced my clients, and conceiving that no case could possibly be made out to justify my detention for a single hour, I preferred that the case should be gone into, unaided though I was. In the course of the examination, Bircham arrived in the room with Fletcher, and I then retired with the former, and conferred on the propriety of calling the latter, when we determined that, however unpleasant it might be for him to be so suddenly placed under examination, yet, that as he was the only person who could explain the business, he must be called. We then beckoned to Fletcher, who was standing at some distance. We told him that he must really explain the matter. He said, "I shall be pressed to divulge the name of my informant at the Bank." I replied, "I conceive you are not bound to do that." He said, "Will you protect me if I am asked the question?" I replied, "I will certainly submit that it is a question you are not bound to answer." He then said, "Had I not better account for my connection with the executrix by meeting her at the Bank?" I said, "By no means; on the contrary, *state the precise truth in every particular.*" He again urged, that he was afraid they would press him as to his informant at the Bank, and suggested that before he appeared as a witness we ought to have some further conference. I replied, with some warmth at his hesitation, "Even if you should be pressed to reveal the name of your Bank friend, I can't help it; you know how you accounted to me for meeting with Emma Slack, and I have no alternative but calling you; my detention in custody, even for twenty-four hours, would do me irreparable mischief. Refuse, if you please, to disclose your friend's name, *but, for God's sake, don't build up a particle of fiction.*"\* [\* See his Confession to Dr. Browning, of what passed at this conversation.—P. 97.] My partner also urged him in a similar manner, reminding him that he was in duty bound to state what he knew, after the serious aspect which the matter had assumed, and that such information must at once release me. Without receiving or waiting for any direct answer, I called him before the Lord Mayor. I have set this out with some particularity, as the prosecution, with that exquisite skill (but as I humbly think not with equal fairness) which has characterized the entire prosecution against me, proved the fact of my being in conference with Fletcher prior to calling him, but suppressed the fact of its being in the presence and hearing of my partner, and without putting in Fletcher's deposition, which, however prejudicial to him, would have shown the deception he had practised upon me.

I have now, Sir, narrated as perspicuously as my enfeebled energies will enable me—for I am now in hospital on the bed of sickness—the entire history of this to me most melancholy business. In the absence of all my books and papers, I can only rely upon my memory for dates and other particulars, but I believe that no material inaccuracy will be found. As the perusal of the naked detail, upon which I have entered, will of itself occupy a sufficient portion of your valuable time, I could have wished to stop here, leaving you to draw your own conclusions—aided by the confessions, declarations, and certificates appended hereto. There are, however, some points upon which I feel constrained to address to you a few observations.

It has been said, that if innocent, I have at least betrayed gross NEGLIGENCE in not detecting the fraudulent character of the business introduced to my office. Whatever credit for candour I might obtain for admitting such a charge, it would be insincere were I to do so. It may be that I did not in all things exercise a perfect judgment; yet, after well weighing the circumstances, considering how appearances were preserved, and especially the implicit confidence I placed in Fletcher, I am persuaded that any solicitor, similarly placed, would, in the ordinary dispatch of business, have acted as I did. Whether I should not have detected fraud, if the business had been introduced by a stranger, or had it been my duty to sift and investigate the claim as a purchaser's solicitor would an abstract of title, and the evidences by which it was supported, is a widely different question. True, indeed, had any salient fact creating suspicion shown itself, I conceive it would have been my duty to have paused and got it cleared up before proceeding further in the

business, but none such presented itself to my mind. On the contrary, there was everything to create confidence. But even if a degree of negligence be attributable to me, does that establish my guilt? If it does, then every one of the men of business through whose hands Slack's case passed are guilty. There are few transactions, which afterwards reviewed with scrupulous severity, that would not exhibit features of real or supposed negligence, or error of judgment; and, although I am far from disposed to make illiberal remarks upon the conduct of others, yet, when my own conduct has not only been animadverted upon in a narrow and ungenerous spirit, but I have been pronounced guilty upon the strength of alleged negligence, I trust I shall be pardoned for pointing out acts of others, of at least equal inadvertence.

The first person officially employed was Mr. Jordan, the local registrar: he records the death of a person, said to have died in his immediate locality, although no such place as that assigned, namely, "South Terrace, Pimlico," was known; and, although the account given him of the death was extremely suspicious, nevertheless, when applied to some time afterwards for a certificate of the death, he gave it without hesitation. This entry was the very foundation-stone of the fraud, and his certificate was the chief evidence of the *bona fide* character of the business, and prevented those inquiries which I might otherwise have conceived necessary; yet Mr. Jordan was an educated surgeon, and may be presumed, therefore, to be a man of intelligence, and fully aware of the importance of such entries.

Then we have our own proctor, Mr. Wills, a man of undoubted respectability and talent. He, shortly after the will was proved, applied to my partner for the parish in which the deceased died;\* [\* See Extracts from Diaries.—Pp. 124–126.] we neither of us knew, and accordingly instructed a man named Cranbrook, who was acquainted with the neighbourhood, to make inquiry. He did so, and reported that he could not distinctly ascertain; and before we could have further inquiry made, we received the probate from Mr. Wills. After my apprehension, my solicitor inquired of that gentleman how he had ascertained the parish. He replied, "I really can't tell whether we guessed at it, or how it was." Then the probate was lodged at the Bank by my partner; and, notwithstanding it is said that the will, from no address of the witnesses being given, and one or two other circumstances, bore internal marks of suspicion, these were entirely overlooked by the solicitor to the Bank, as well as by the authorities at Doctors' Commons, although it was the bounden duty of those high authorities to scrutinize the will. The conduct of the BANK AUTHORITIES is, however, the most remarkable: they, it appears, received the probate as of the will of Anne Slack, of Abbott's Langley, who owned and regularly received the dividends of the £6,000 stock, *although no mention of it was made in the will*, which specifically bequeathed the £3,500 only, and *the entire effects were sworn under £5,000*; yet, if she were the owner of both the amounts, she must have been worth at least £10,500. Still no inquiry was made, as appears by my partner's letter to Fletcher. Had a single question been put to my partner, or either of our clerks, when they from time to time called to inquire what progress was making, the mistake must have been at once detected, and the fraud exposed; or *had the signature in the Bank books been compared with that to the will*, the error would have been palpable, and the nefarious design certainly frustrated. It is far indeed from my intention unnecessarily to impute to the Bank or their solicitors a want of skill or caution: but when such oversights are observable in those whose duty it was to investigate the claim, surely some allowance may be made for the retained agent and advocate of the claimant. Every lawyer knows how insensibly his mind becomes biassed [sic] in favour of his own client's case.

It may here be proper to point out a most important error, under which many intelligent persons, and, it is quite possible, some of the jury, laboured, namely, that the executrix, and I, as her solicitor, represented the will as that of *Anne Slack*, of ABBOTT'S LANGLEY!

That is a very serious error; because, under such an impression as this, I must appear a guilty person, inasmuch as I had no reason to doubt that she was still living. But there is no pretence whatever for such a charge, and the error only arises from an inattentive perusal of the case. One of the public journals states, that Emma Slack had represented herself "as the niece of Anne Slack, of Abbott's Langley, sister-in-law of Captain Foskett." Not only did Emma Slack never make any such representation—at all events, to my knowledge—but there is nothing either in the will—the certificate of death—the affidavit at the Commons—the application to the Bank, or in any part of the proceedings, about Abbott's Langley, or which in any way connects the will with Captain Foskett's sister-in-law—save only the fact of the deceased having once lodged in the same street. On the contrary, the certificate describes the testatrix as of the age of sixty-eight, Miss Slack, of Abbott's Langley, being but thirty seven; and the signature to the will corresponds with that of an old lady, and was totally dissimilar from Miss Anne Slack's: besides which, the will made no mention of the stock in respect of which Miss Slack regularly received her dividends, nor was any claim made for that fund. My partner, or either of our clerks, would at once have dispelled the illusion, had the Bank asked a single question in explanation of the remarkable discrepancy in the property being *sworn under* £5,000; whilst, if the pretended deceased were the owner of both stocks, her personal property would have *exceeded* £10,000. In addition to this, a Mr. Offley wrote to us in answer to our advertisement in the "Times," that "there was a Miss Slack at Abbott's Langley." Bircham wrote at once in reply, that we "were quite aware of that, but she was not the person entitled." When also Mr. Freshfield referred to my communication with Captain Foskett, I at once said that we had clearly ascertained that *she was not the party entitled*.

But although a large portion of the public has certainly laboured under the error I have pointed out, as well as other very great ones, I am under no apprehension but that you, Sir, will perceive that the only question in the case is—Whether I really believed that the presumption which had been raised in favour of Captain Foskett's sister-in-law, by the isolated fact of her having occupied a temporary lodging in Smith-street, had not been completely rebutted by the positive and apparently conclusive facts as to AGE and HANDWRITING: and whether I did not really and truly believe that the case of Emma Slack, introduced to me two months afterwards by Fletcher, was genuine.

To return to the negligence and oversights of the other men of business employed, and through whose hands the transaction passed. CHRISTMAS, *the Bank clerk*, proved that he compared the handwriting of Miss Slack, of Abbott's Langley, with the owner of the stock, and returned it to Fletcher, stating it agreed, "with a slight variation only, the letter being in rather a lighter hand;" in other words, that it appeared she was the owner. About two months afterwards he was told by Fletcher that she was not, but that he had found and produced the person who was. From Christmas's position in the Unclaimed Dividend Office, in which he was the senior clerk, he must have been privy to every step taken in Emma Slack's behalf, and to her receiving the fund; *yet he caused no inquiry to be made, nor offered the slightest obstruction*. He received, he says, from Fletcher £100 for his information. How could he consider himself entitled to receive £100 for information, when he must have seen from the will, even if Fletcher had not communicated the fact, that the claimant knew of the existence of the fund, and if legitimately entitled, could have required no information from him. The Bank, discovering that he had received this and other large bribes from Fletcher and other persons for information of this nature, suspended him; but the prosecutors at the trial most strenuously denied that he was in any way an accomplice. He may, indeed, have been an innocent man; but I submit to you, Sir, very confidently, that both from the bribe which was traced to and confessed by him, and the other circumstances I have mentioned, there were more tangible grounds for suspecting him of a guilty knowledge than myself.

The last person employed was Mr. PHILPOT, THE BROKER, a respectable man, as I have always believed. I applied to him to identify me, proposing to identify the executrix myself; but he said, "Oh, I suppose you know she is the executrix?" I replied, "Certainly, there was no doubt of that, for I was present when she proved the will." "Oh, then," said he, "I will identify the lady — I do it constantly, and it's the shortest way." He accordingly identified her, and signed the usual declaration. I confess I thought it rather a loose practice; but he said it was quite customary, and was regarded as a mere form. There is no doubt that Mr. Philpot relied entirely upon me, and, heaven knows, I did not mislead him; but such reliance must have been based upon his confidence in Fletcher, who originally introduced me to him, and through whom alone I was known to him. In the course of the three years he knew me, we had never met in business more than three times, and he was never at my house or office in his life. If he, an experienced stock-broker, could without impropriety place so implicit a confidence in a comparative stranger, surely I might well do so in Fletcher.

To these instances, I must add that of MY PARTNER, Mr. Bircham, a shrewd and intelligent man, against whom no imputation has been raised, and who, having *placed himself under the protection of the prosecutors*, and given them every assistance, is pronounced to be above suspicion. But if it can be said that I ought to have known of the fraud—nay, must have done so—so ought he; he knew as much as I did of every circumstance. He knew the grounds upon which I rejected Miss Anne Slack's previously supposed identity, and entirely concurred with me in opinion. With a perfect knowledge of all these facts, he lodged the probate of the fictitious deceased at the Bank with the claim, and took an active part in advancing it; indeed, I never once attended to support it, being absent at the Kingston Assizes nearly the whole time the business was in progress.

It was proved at the trial that there was some conversation with Fletcher and the executrix about CHANGING SOME OF THE £1,000 NOTES. There may have been something said about this—I have, however, no recollection of it; but if it was talked about, the parties evidently thought it better to get this done when *I was not present*, for not a note was changed until I had done with the business.

The pertinacity with which the proof that I was present when the six HUNDRED sovereigns were received, and that they were taken by me out of the office with the executrix, was adduced, and the elaborate pains taken to support it, demonstrates, I respectfully submit, the absence of any real evidence against me. I was indeed astonished to find such a point made of this, and that every exertion was strained (and perhaps successfully) to persuade the jury that I received this for my own use, there being no other evidence to ground such a suspicion than that I received it, and simply carried it out of the office for a lady who had, or pretended to have, the gout in her hands. As well might it have been imputed to me that I received any given portion of the remainder for my own benefit, having received, as is quite usual for solicitors, the entire fund,—a fact fully recorded in my diary of that day. But if any presumption could fairly arise that I received this money for my own use (and the possibility of it was, I have no doubt, one of the facts which influenced the verdict of the jury), I submit, that the facts which have transpired since my trial fairly outweigh such a presumption, if they do not entirely disprove it. These are the confessions of Sanders, the husband of Emma Slack, —the admission of Mrs. Sanders herself, and the confessions of Fletcher—all three declaring that I received only my regular professional charges, and the fact which a gentleman has lately come forward to attest, namely, that I borrowed of him £100, at high interest, shortly after this business was settled. There is also the receipt for the entire fund entered in the office cash ledger, and signed by the executrix. Besides which, I submit to you, Sir, whether my receipt of this money, and allowing myself to be seen to take it away, was not, fairly considered, an argument of my innocence for had I really known that, instead of being engaged in an honest and legitimate business, I was party to an extensive and most dangerous

robbery, I should hardly have received into my possession 600 sovereigns in this open manner, when nothing would have been easier than to let the whole amount have been first received by the executrix in notes, which might have been afterwards converted and divided with the utmost facility.

It has also been urged against me, that I NARROWLY SCRUTINIZED THE TITLE of Miss SLACK, of ABBOTT's LANGLEY, BUT ADOPTED THAT of EMMA SLACK WITHOUT INQUIRY. The latter assertion is not quite correct; but I invite you, Sir, to consider the difference in the cases. In Miss Anne Slack's case I was instructed by Fletcher to ascertain, 1st, If she was the party entitled; 2nd, If she knew it; but on no account to disclose the nature or amount of the property without his express permission. This required caution, secrecy [sic], and tact; an air of mystery and reserve necessarily, therefore, pervaded my correspondence; and but too well did I succeed in accomplishing the object of my deceitful and perfidious client. With regard to Emma Slack, her case presented itself in so conclusive a shape, that there seemed no room for doubt. No inquiry was necessary, and the making of any by me, under such circumstances, would have been extraordinary indeed. Fletcher plausibly explained how he had met with the legatee (not at all wonderful as he had, or rather pretended to have, devoted two months to that object); there was the will naming the very stock; she produced a genuine certificate of her aunt's death; she was personally most respectable, and answered my inquiries without the slightest appearance of embarrassment;- not dreaming that so awful a crime as the forgery of a will had been committed, I regarded the matter as one of the clearest and simplest cases in the office. Having, therefore, introduced the executrix to our proctor, which I did from politeness to a new client and a lady, I left the business to be attended to by my junior partner and clerks, devoting my own attention to other business which required more especial care and experience. Every step in the negotiation with Captain Foskett is recorded in my diary, and regularly charged to Fletcher's account; whilst the proceedings taken for Emma Slack are all as regularly charged to her in the respective diaries of myself and partner.

In the previous narrative, I have confined myself to the case of Slack, not only to avoid unnecessary prolixity, but because, in the first, Stewart's, I received a prompt and unhesitating acquittal, in which I trust I may assume, from the summing up of Mr. Baron Gurney, the three learned Judges who presided throughout that trial fully concurred, and that the points which had created a prejudice against me in that case were fully and satisfactorily met and explained. But were it not from a fear of becoming tedious, I could adduce more additional matter to prove the correctness of that verdict. Burchard's and Hunt's cases



were abandoned by the prosecution. I think I am justified in saying, that they were “abandoned,” not only because they preceded Slack's in order of date; but the prosecutors will, I think, not deny their previous avowal that there were but two cases in which they had a chance of convicting me, and that if I were acquitted in those, the prosecution against me must fail. It was matter of sincere regret to me, as is well known to my counsel and solicitor, that these two cases, Burchard's and Hunt's, were not taken in their order, as they would have developed my innocence in a remarkable manner. This was well known to the prosecutors; and their passing them over was only another instance of the subtle and studious calculation by which I was overwhelmed. My counsel were, therefore, perfectly sincere when, after the trial of Slack's, they urged the prosecution to try the other cases. There is, however, a circumstance which, though it could not appear at either of the trials, being separate, has, nevertheless, been much commented upon to my prejudice, and which it may therefore be proper to explain. I allude to the fact, that A DIFFERENT PROCTOR was employed in each of the four fraudulent cases. In the first, Stewart's, Mr. Potts was employed by Fletcher, some weeks before my professional assistance was obtained. In the second, Burchard's, I employed Messrs. Jennings and Cox, at the request, and upon the introduction of the brother of the latter, who at that time was my client. Having had some disagreement with those gentlemen about their bill in this and other matters, I in the next case, employed Messrs. Iggulden and Puckle, the proctors of Messrs. Scoones, during my seventeen years' clerkship. Shortly after this, our firm became connected with Mr. Wills, from his being the proctor in an important suit, which had been before the Privy Council, arising out of the will of the Rev. George

Gordon Smythe, in which we had been retained as the solicitors. We then employed Mr. Wills in all the cases that subsequently arose in the office, of which Slack's was one. Nothing, however, could more fully show what unjust and irrational inferences are drawn from particular facts, when the mind has been saturated with prejudice, than the conclusions which have been deduced from this change of proctors. Surely it would have been the course of a guilty attorney, engaged in such hazardous proceedings, to have established a confidence with one respectable proctor, and to have continued with him, because he would naturally receive successive introductions of business with confidence, whilst comparative strangers would be more likely to scrutinize both the business and the parties introduced. When I retained Messrs. Iggulden and Co., they had a perfect confidence in me, from my long clerkship with Messrs. Scoones; far easier, therefore, would it have been to palm off a suspicious transaction upon them. Besides which, it may be observed, that it was only necessary to state to the proctors what was the *amount* of the property, not what *it consisted of*. I did indeed, as was proved by Messrs. Iggulden and Puckle's clerk, mention to him, in the course of conversation, that the property consisted entirely of unclaimed stock and dividends—a communication wholly gratuitous, and showing, as I submit, my ignorance of any reason for concealment.\* [\*A leading City official, who heard the whole of both trials, visited me afterwards in Newgate, and said, “My mind has not been influenced against you by any facts proved at the trial, but because you did not employ the same proctor in the different cases.”] I may here also be permitted to mention a similar frank and unnecessary communication. A lady, named Wilkson, the wife of an old client, called at my office the day Fletcher introduced Sanders as “Thomas Hunt.” She called on Mr. Wilkson's business, but I said, “I am sorry I can't stop now, for I am just going, by appointment, to Doctors' Commons, to prove a will for a man named Hunt—a lucky fellow, too, for having been at sea half his life, the first thing he learnt after his return was, that his grandmother had left him quite a little fortune in the Funds, and the will was providentially found in the care of a woman, a friend and neighbour of the deceased.” I had forgotten this casual conversation, until long after my apprehension, when Mrs. Wilkson named it to one of our clerks. With reference to the illiberal and hasty inference which was drawn from the change of proctors, I would beg to submit, that there might have been some reason to suspect a guilty motive, if a different broker had been employed to sell the stock in each of the four cases, because they of necessity knew precisely what the property was, but no such precaution was taken. In the two

consecutive cases of Stewart and Burchard, I employed Mr. Hill. I did so from my temporary connection with him as a colleague on the Committee of the Southwark Literary Institution. Prior to Hunt's case, he had withdrawn from the Institution, and my connection with him had ceased. Fletcher then introduced me to Mr. Philpott, and I accordingly employed him in both Hunt's and Slack's cases.

It would, Sir, occupy too much of your time, were I to detail the particulars of all the cases in which Fletcher traced out the true owners of unclaimed stock and dividends, and through my professional instrumentality placed them in possession of their rights; but as many persons, who have since my trial been made acquainted with the way in which Fletcher dovetailed his fraudulent introductions with legitimate ones, have considered that they go very far to explain what has appeared mysterious and suspicious in Slack's case, I beg leave to quote two of these, which I will do as concisely as possible. The first is that of "David Smith." It was some time in the year 1840 he told me he had found a poor man, who was the eldest son of one David Smith, who had died possessed of a considerable amount of stock, and which, with the dividends, had been transferred to the Commissioners as unclaimed. A few days after he introduced this person to me, when it appeared that his father had died, leaving a will, and he referred me to the executor. I accordingly wrote to that gentleman, and afterwards saw him at my office. He said that all the property known to himself and co-executor had long since been administered. I acquainted him that the party who had brought David Smith to me was a client of mine, and had authorised me to state that he could put the executor in possession of a considerable sum to which the family was entitled, but that he would require to be guaranteed the payment of a certain per centage as a remuneration for the trouble he had taken in tracing out the owner, and as a *douceur* for his information, but which would not be required until the property was actually realized. To this the executor said there could be no objection, but that he would rather the terms should be negotiated by his own solicitors. To this I readily assented, and he referred me to Messrs. Lawrence and Blenkhorne, of Bucklersbury. With those gentlemen I accordingly negotiated terms—the property was recovered—the per centage was paid to me, and handed to Fletcher, who paid my ordinary bill of charges and no more. I was present when the fund was distributed amongst the different members of Smith's family, to whom this money was indeed a blessing, for they were in the utmost poverty, and each paid into my hand his own quota of the per centage agreed upon with expressions of gratitude. I only wish those who have censured me for being concerned even in the most legitimate cases of unclaimed stock and dividends as unworthy a respectable solicitor, had been present at this settlement, and witnessed the good which was done by transferring from the national funds that which belonged to these poor people.\* [\* It has been supposed that Fletcher exacted a large sum for information to the owners of unclaimed dividends. This is quite a mistake. He never, to my knowledge, received more than a moderate quantum meruit for his labour and outlay in tracing them out. In two or three cases he expended considerable labour and money, in seeking out claimants, to large amounts, without success, and those matters were abandoned, and I heard no more of them. In five cases the true owners were found and property restored.]

The other case, and which more resembled Slack's, was that of "George Robins, of Warwick House, Regent-street." About the end of 1840, or beginning of 1841, Fletcher instructed me to communicate with Mr. Reid, of Ripley (the uncle of Mr. Bramall, my late solicitor), who was one of the executors of the deceased, to learn if he knew of a sum of about £1,500 stock in the deceased's name, and which had gone to the Commissioners. I accordingly commenced a correspondence with him, which was continued at intervals for several months—Mr. Reid being unwell, and I only wrote occasionally, as Fletcher reminded me of this when he saw me on other business. At length Mr. Reid called at my office, and although I entirely concealed from him the nature and extent of the property, he was so far satisfied as to refer me to his solicitors, Messrs. Smedley and Rogers, of Jermyn-street. With them I accordingly negotiated terms. An agreement

was prepared, in which I inserted the name of a friend of mine as a trustee for Fletcher (who desired not to appear in it). The money was afterwards realized by the executors, who paid me a hundred guineas for the information, trouble, law charges, and some outlay. I consumed much time in this business, besides being at some expense; and Fletcher paid me £55 for my law bill, and I gave him a check for the remaining £50.

The letters and interviews herein were characterised by the same secrecy and mystery which had been noticed in Slack's case, until terms to Fletcher's satisfaction were arranged.

Since my trial I have heard with astonishment that there are those who have supposed that I may not have been *a direct participator* in the extensive frauds, or *a sharer in the plunder*, but that I may have CONNIVED at them. Merciful God! What suspicions and surmises obtain entrance to the mind when warped by prejudice! For this is to suppose that I became an accomplice in a fearful robbery, openly performing a series of the most dangerous acts, which I might so easily have avoided, for the common professional remuneration, my share of which was but £7. 10s., whilst Fletcher and his adept confederates, who had less at stake, and who, for aught I knew, might soon place themselves beyond the probable reach of justice, realized in Slack's case alone Four THOUSAND FIVE HUNDRED Pounds. But unreasonable, not to say monstrous, as such a supposition appears to me, it may be proper to show what my position was at this period—the comparative small value of Fletcher's business—and what my conduct was from the time of Mr. Freshfield's visit to the day of my apprehension.

I had then been seven years in practice. By no ordinary labour, anxiety, and self-denial, I had formed a connection with about 150 respectable clients. Our bills of costs for the year 1842-3 amounted to £3,350. I had a partner of wealthy connections, and with whom not a word of misunderstanding had arisen since our connection. I may truly say, it was the exemplification of a successful and happy partnership. The good understanding between us is proved, not only by his letter to the "Times" of the 11th of December, 1843, in which he declares his "*perfect knowledge of my innocence, and that a more honourable man or a better partner could not exist*," but also by his various letters to my private friends. We had five stipendiary and two articled clerks, and our connections were extending daily. Fletcher's business, though as a capitalist Bircham and myself considered him as one of a useful class of clients, was by no means considerable, his average annual business, introductions and all, not being more than a fortieth of our entire income. I was as happy as a successful practitioner

could desire, contemplating and watching over the business I had formed with no common solicitude. The difficulties of a commencement having been surmounted, I indulged a sanguine hope that the object of my ambition, namely, to be the founder of a permanent and respectable firm, was in a fair way of being accomplished. Is it then a suspicion that a reasonable mind could for a moment entertain, that for the trifling remuneration I received, or to promote the villanous [sic] designs of an individual client *from whom I never received a favour in my life*, I should have risked, nay, have exposed myself to the certain forfeiture of a position so valuable, much more to the unspeakable horrors of its penal consequences? Fletcher was not a man with whom I had the slightest private acquaintance; I never ate or drank with him; I never was at his house in my life, or he at mine, except in my office on business. Our connection was purely professional, and that rather of a cold and formal than a familiar character, as, indeed, is clearly indicated by our correspondence, and was proved by more than one of our clerks at the trial.

One of the facts most strongly pressed against me at the trial was that I refused to give up when first applied to (for it will be observed that I only declined to give it up on the *instant*) THE NAME OF THE CLIENT WHO INTRODUCED EMMA SLACK to our office. But I submit to you, Sir, whether, if I had possessed a guilty knowledge, I should not, seeing that the fraud was discovered, have secured my own protection by pointing out the only guilty party I knew. My firmness, obstinacy perhaps it may be termed, on this point, so far from protecting me, necessarily brought on me the very first attack. That my prosecution was owing to this unfortunate fidelity to a client I had every reason to believe a man of integrity, Mr. Freshfield has himself declared. Some time after my apprehension, my solicitor having thoroughly investigated my case, and satisfied himself that I was as innocent as the proctor, the broker, or either of the other professional men through whose hands the business had passed, waited upon Mr. Freshfield, and inquired if it was really intended to persist in prosecuting me, urging that I was willing to give every information in my power, indeed that I had done so when first applied to, except the name of Fletcher, which had been withheld from a belief that it would have been a violation of professional duty then to disclose it. "Yes," said Mr. Freshfield, "that's all very well; and I confess that the strong conviction you evidently have of Barber's innocence goes very far to make me believe it, but he *would not* give me Fletcher's name; *had he done so he would not have been where he is.*" There is indeed but little question that I should have been more fortunate had I really possessed a guilty knowledge, for in that case it cannot be fairly doubted that any man in such a situation would at once have secured himself by becoming a witness for the Crown.

Fletcher has, I am told, endeavoured to make it appear that I was under obligations to him for having sometimes lent me money, but he took care to suppress the terms upon which he did so; he exacted from me interest varying from 10 to 60 per cent. for such occasional loans, according to circumstances. I have sometimes got him to discount a bill which I had received for costs, and for which he charged me 60 per cent.\* [\* I. e. at that rate per annum for a few days, to meet sudden emergencies.] A few months after Stewart's business was settled, I with great difficulty prevailed upon him to advance me £200; but before he would consent, he put me to the expense of insuring my life as a collateral security, which I accordingly did, for his benefit, in the Sun Insurance Office, besides which he made me pay him £15 per cent.: this I continued to do until Bircham purchased a share of my business in December, 1841. Shortly after this I gave Fletcher a check for £50, with notice that I should pay off the remaining £150, unless he would allow it to remain at 10 per cent., and dispense with my keeping up the life insurance. After a good deal of hesitation, and finding that I was in earnest, and doubtless well knowing he could not have made more or so much of his money, he assented to my proposal. At the period of my apprehension I was still indebted to him in that sum, subject, however, to the bill of our firm upon him of £40, for the conveyance of the property he had purchased a few months before in Market-street, Westminster, and also subject

to my general bill upon him; so that upon a proper adjustment of accounts the balance would probably have been in my favour. These are facts which he must have admitted if properly examined, and which I should have proved if permitted personally to submit my books and papers. By one of his letters to me, handed to the judges in the course of my address to them when brought up for sentence on the 22nd of April, it will be seen that I had applied to him to allow the payment of the balance due on my note to him to stand over; and that by such letter, written *about a fortnight after Mr. Freshfield's visit*, he declined to accede to my proposal, and gave me notice that he should require payment in January, alleging that he was quite short of cash, a falsehood which was clearly proved by the subsequent examination of his banking account, which showed that he had to the credit of his deposit account a sum certainly exceeding £1,000, for which he was only receiving 2 per cent. At the foot of this letter he says, "*I have heard no more of the Bank business, and I suppose you have not.*" As this perfidious man must have been expecting to hear of my apprehension every hour, and watching his opportunity to become "*evidence for the Crown*," as he since confessed to Smith he anticipated, this letter appears to have had two objects—1st, to allay any misgivings that might have arisen in my mind, by boldly requiring payment of a debt; and, 2ndly, to get some information about the "Bank business," which he must indeed have been anxious about. In reply I wrote him that the amount should be paid as he desired, and that in regard to Mr. Freshfield's inquiry I had heard no more, and supposed they had discovered their error. As I understand Fletcher's letters are in the hands of the prosecution, my letters will probably be found with them. When Fletcher by his inquiry reminded me of Mr. Freshfield's visit, I congratulated myself on my firmness in preserving a client's confidence inviolate, fully believing I should hear no more of the business, little dreaming that that client was deliberately awaiting the ruin which he must so well have known would speedily overtake his victim, or that the officers of justice were (as transpired from the cross-examination of Forrester) dogging my steps day after day from morning till night. I need scarcely ask you, Sir, whether if I had known that Fletcher was making his thousands by systematic robberies, instead of a moderate remuneration for information and assistance to legitimate claimants, I should not have commanded such pecuniary accommodation as the exigencies of my business required, without paying such extravagant interest, and without being driven to such a troublesome and expensive security as a life insurance. Some explanation of my necessity for borrowing money at high interest may be necessary. At the period when I had the £200 of Fletcher, I had been disappointed in the receipt of a larger sum from a gentleman in the country, for whom I was town agent, who unfortunately failed. I had also some other losses; and the rapid increase of my practice required great additional outlay, and I deemed it wiser to borrow money, even at high interest, than to displease valuable clients by sending in their bills unasked for.

Fletcher used to require his in any particular matter—the settlement of a purchase—or the like; but although he exacted such interest from me, I had a general bill upon him of several years' growth.

Very elaborate pains were taken at the trial to prove that I had made AN ENDORSEMENT IN PENCIL UPON THE ORDER FOR PAYMENT OF THE DIVIDENDS to the executrix, showing how the amount was to be paid. The learned judge remarked, that this was the only act which had been proved to be done by me *that did not fall within the regular province of a solicitor*. This is one of those acts from which different minds have drawn conclusions diametrically opposite; but I confidently submit, Sir, to your enlightened and candid mind, whether this was like the act of a guilty or an innocent man. My client was a lady—from the gout in her hands she could only write with difficulty, as her various signatures indicate—I inquired how she would prefer to receive the money, and endorsed the order accordingly. Is not this just what an ordinary person in common politeness, still more her solicitor transacting the entire business, would do, perfectly confiding in the legitimate character of the business, and precisely what he would cautiously abstain from doing if he entertained the remotest suspicion to the contrary?

But, Sir, if anything further be necessary to demonstrate my implicit faith in Fletcher's integrity, and in the proper character of the business he had introduced, it must surely be considered as conclusively furnished by my conduct from the time of Mr. Freshfield's visit to that of my apprehension, a period of twenty-four days. Day by day I was laboriously occupied in the multifarious duties of an extensive practice.\* [\* It is known to my clerks that, upon the very day Mr. Freshfield called, I was engaged in my office, from nine in the morning till midnight, preparing for the trial of a cause, which occupied me in court the next day, from nine in the morning till half-past seven in the evening.] The prosecution know well that no attempt was made to *escape*, and it must be almost as evident to them that not the slightest preparation was made for *defence*. For the latter, two things were indispensable, viz the *papers* in the different matters, with the books in which the letters and other entries were made, and an adequate supply of *funds*. I neither secured the one, nor made the least effort to provide myself with the other. At this period there was due to our firm not less than £2,000 for book debts, and about £1,500 to myself prior to the partnership. To the firm there was due in one sum £330 for principal, interest, and costs, and which was about to be paid off. I took no steps to hasten its payment or secure the receipt of it by myself: it therefore fell into Bircham's hands a short time after my apprehension, who refused to apply a shilling of it in my defence, being advised, he said, by "his friends," to retain it, to meet claims "that *might* be made upon the firm." My personal credit, at this time, was good, and that of our firm was high; but, during the interval of twenty four days, when I might so easily have raised £500 or £1,000 to resist the fearful attack that was preparing against me, I neither applied for a single debt due to myself or the firm, or attempted to borrow a single pound, although the balance at my bankers+ [+ I banked with the Bank of England, so that the prosecutors had abundant facilities for investigating my pecuniary affairs.] was at the lowest ebb, there being but £30 due to me when apprehended. As to the papers, they were not so much as referred to since I submitted those of Slack to Mr. Freshfield *they all continued in the places where they were severally deposited when the respective matters were settled*; the consequence was, that the prosecution selected whatever they pleased for the support of the charge against me, suppressing those which would have proved my innocence; and my partner and his friends (as they assumed to be) carried off the remainder. I was thus put to the greatest possible inconvenience. When my Solicitor applied for them to Mr. Freshfield, he referred him to Mr. Bircham. Bircham was never to be seen by my solicitor - in vain did he inquire for him, in vain did he write for an appointment with him. He was not to be seen by any person concerned for the defence, although he was in constant personal communication with the prosecutors. After great difficulty and endless applications, my solicitor did get some books and papers from the hands of Mr. Bircham's friends, but the most important were either withheld, lost, or mislaid; and here I am constrained to advert to Bircham's conduct, although, heaven knows, I have no vindictive feeling towards him or any man living. Full well he knew my innocence—most solemnly had he declared it; and with equal solemnity did he pledge himself to assist me to the last in my cruel position. But in the face of all this—under the influence (as he himself declared) of "friends," who had no personal knowledge of me or my character, and who, I will take the liberty to say, gave him advice as impolitic as ungenerous, he not only deserted me, but became the facile instrument of the prosecution. His evidence, however, did not answer their purpose, for they not only kept him out of the witness-box, but (acting under their instructions, as I have every reason to believe), he kept entirely out of reach until the trial was over. His heartless advisers appear to have conceived the notion, that by my destruction, and his securing, as he did, all the books and papers, he would also secure the entire practice. I was shocked to hear that he said, "he had no doubt I should be acquitted, but that it would be better for him if I were transported!" His better feelings will, however, I am persuaded, sooner or later, be aroused, when he will sincerely regret his ungenerous conduct towards me.

Of course, when I was in prison my credit was stopped, and those indebted to me, not knowing what course affairs would take, demurred to paying me. I was unwilling to sacrifice my books and furniture by a sale, believing that as the facts became better known to the prosecutors, I should be released: they thus fell a prey to my panic-stricken landlord and other creditors—not a single article was saved to me—my books, scientific instruments, and articles upon which I set an especial value, were all swept away;—in a short time the small sum at my command was exhausted. I became literally penniless, and, but for the generosity of a few steadfast friends, I should have been driven upon the gaol allowance long before my trial. I lost my counsel, Mr. Chambers, because I could no longer pay him his five guineas per day for attending the almost endless hearings. My solicitor next declared that, in justice to his family, he could no longer devote his time to my service without suitable advances. In this deplorable condition, another gentleman (with a generosity, for which I shall ever be grateful) came forward and offered to devote his personal labour, but naturally observing that he could not undertake to provide the outlay. He mentioned my condition to Mr. Parry, a talented gentleman, just called to the bar, and who, recollecting me as the secretary of “The Legal Discussion Society,” and more recently as an active member of the Committee of the “Southwark Literary Institution,” at once offered to attend for me before the Lord Mayor. I was then reduced to the most humiliating appeals for the means of existence, and to provide for the indispensable current outlay; but such was the prejudice which false, distorted, and ex-parte representations created in the public mind, that even my friends became lukewarm, and the subscription was less than I had many a time procured for a distressed family in a few hours, and from entire strangers. The consequence was, that much important evidence from Bath, Bristol, and other places, was not obtained—the procuring of subpoenas was delayed so late, that some witnesses were not secured, and even the copies of the depositions were not had in sufficient time to obtain full and proper advice upon the evidence.

I had retained Mr. Thesiger, but the payment of his fee was impossible. Mr. Wilkins was made acquainted with my forlorn situation, and most magnanimously consented to receive my papers, with a very inadequate fee. Most unfortunately, too, my solicitor was prevented by illness from attending the trial, and thus I lost the great value of his superintendence, as well as his very important evidence.

These, Sir, are facts, which, if not already known to you, may be distinctly ascertained, and can you or any rational man believe that I should have left myself thus destitute, with *ample means of preparation* prior to my apprehension, if I had believed that a forgery had really been committed.\*  
[\* Only two days before my apprehension I had paid away a large sum of money to a client of the excellent gentleman who now gratuitously acts as my solicitor. He was led to watch my case from the belief that I could not have known danger was before me, or I should never have left myself in necessitous circumstances.]

It only remains for me to advert to the CONFESSIONS AND DECLARATIONS of THE FOUR OTHER PRISONERS. *Fletcher*, who projected the frauds, and under whose superintendence and direction they were executed, has done me the niggardly justice to declare my perfect innocence; the genuine character of that declaration is better proved by the documents accompanying this memorial than by any assertions of my own. *Mrs. Dorey*, when first apprehended, unreservedly declared my innocence to her medical attendant, Dr. M'Murdock, at the Compter. In her subsequent confession, however, in which she was seeking immunity for herself by assisting the prosecution, she evidently seeks by insinuation to implicate me, but her inability to do this is equally clear from the entire absence of a single fact tending to do so; and this, although she was not only *Fletcher's* active confederate in all these frauds, but had been most intimately acquainted with him for years before it was my misfortune to know him. It will be remembered, too, that she originally instructed Mr. Wilkins, as her counsel, and who attended

before the Lord Mayor for her, until he became indignant at the misrepresentations she made to him (through her solicitor) in reference to his lordship. With a full knowledge of all Mrs. Dorey's disclosures, Mr. Wilkins accepted my defence, purely from a belief of my innocence, a belief which he not only solemnly declared in court, but which, since the trial, he has publicly repeated, and has by a series of acts abundantly proved the sincerity of his declarations. *Mrs. Sanders* (Emma Slack) has always avowed my innocence. The declarations of her husband, *William Sanders*, have been made with a consistency, and other circumstances, to which I would beg, Sir, to draw your particular attention. It will be seen by his and Fletcher's confessions, and more particularly from Mrs. Dorey's, that he was an active accomplice of Fletcher's; that he personated the claimant in Hunt's case; and that in Slack's, in which his wife represented Emma Slack, he was an active though secret confederate. When the news of my apprehension was first published, he and his wife immediately took flight together; he communicated, however, with his solicitor, Mr. Harmar, of Bristol, instructing that gentleman to endeavour to negotiate terms for his surrender, ADMITTING HIS OWN GUILT, AND DECLARING IN THE MOST UNQUALIFIED TERMS MY INNOCENCE. When brought to the Compter, he was in an agony of distress; he then said to Dr. M'Murdock, in the presence of a turnkey, "*I am a guilty man, but there is one here, though almost a stranger to me, I know to be as innocent as a child unborn, and that is Mr. Barber.*" "But," said Dr. M'Murdock, "he received your wife as Emma Slack." "Yes," replied Sanders, "and he knew no other." To this the doctor replied, "*Well, Mrs. Dorey told me he was innocent.*" After his committal to Newgate, Sanders repeated this declaration to the chaplain, and subsequently to many of the officers of the gaol. Whilst confined at Millbank, he repeated this declaration to the chaplain, and to other persons there, communicating many circumstances in verification of his statement; finally, on board the Lord Auckland, he made the full and written declaration subjoined hereto: this was entirely without any concert with me, for although the Agincourt and Lord Auckland lay side by side for ten days, neither I, nor, to the best of my knowledge, had any of my friends any communication with him, direct or indirect.\* [\* See also his official examination at Hobart Town.—P. 87.] Of the genuine character of his declarations I do not suppose any doubt can be entertained, and considering that he is the husband of the pretended Emma Slack, and was acting with Fletcher in that matter even before it was introduced to me, I do not think any reasonable mind will doubt that he must be a competent judge of my guilt or innocence. I think I am, therefore, justified in saying, that ALL THE FOUR PARTIES WHO DESIGNED AND EXECUTED THESE FRAUDS, WHOSE INSTRUCTIONS I RECEIVED, AND BY WHOSE EVIDENCE ALONE THE PRESUMPTION RAISED AGAINST ME COULD BE COMPLETELY REBUTTED, HAVE, WITHOUT CONCERT WITH ME, OR WITH EACH OTHER, AND WITHOUT A VIEW TO THEIR OWN BENEFIT, BUT IF ANYTHING TO THEIR PREJUDICE, AT DIFFERENT TIMES, AND UNDER DIFFERENT CIRCUMSTANCES, SOME BEFORE AND OTHERS AFTER THE TRIAL, EXONERATED ME FROM ALL GUILTY KNOWLEDGE WHATEVER.

This prosecution has driven me from honour, happiness, and the brightest prospects, to ruin, disgrace, and misery, almost insupportable; still it may, in some measure, have been brought upon myself by my reliance upon the integrity and veracity of the deceitful and hypocritical Fletcher, and the unflinching firmness, contumacy perhaps, with which I withheld his name. The verdict too may be justified by the *ex parte* evidence upon which it was founded; but I humbly submit, that although I have no legal remedy by which I can extricate myself from the horrible situation in which a train of unfortunate circumstances, almost unparalleled, have placed me, that the facts which have *transpired since my trial* have so materially altered the complexion of my case, that I may fairly and reasonably approach her Most Gracious

Majesty, and pray for the speedy exercise of her beneficent prerogative. Permit me to remind you, Sir, that *not a single fact incompatible with my innocence was proved*. I was convicted *upon suspicion only*, and undoubtedly circumstances were proved, which, unexplained, formed a case of grave suspicion;



but you will at the same time perceive, Sir, that they were of a nature which it was scarcely possible to rebut or explain, except by those for whom I acted. That at least some of the jury must have felt considerable hesitation in pronouncing me guilty, I think must be inferred from the delay of an hour and a half before they could agree upon their verdict; and, without imputing to those gentlemen any peculiar prejudices, I may venture to observe, that no person was less likely to receive the benefit of a doubt than an attorney.\* [\* See the retraction of their verdict, p. 129.]

One fact of great importance, as accounting for, if not wholly justifying, my withholding Fletcher's name, is the fact that he was my client. Although this was admitted by Mr. Erle, in his opening, the learned judge held that I was not entitled to the benefit of the admission, as it was not formally proved. It is, however, sufficiently manifest, not only by his confession, but by the correspondence which I set out in the Memorial I had the honour to transmit to you from Millbank, in May last. The confession of Mrs. Dorey I never saw until it was handed to me by a prisoner on board, shortly before my arrival on this island. Although, as I have observed, that document was framed in no friendly spirit towards me,\* [\* It was made in the presence of the solicitor for the prosecution, whose recommendation to mercy was her only hope.] it will be found to confirm, as far as it goes, every fact set forth in my Millbank petition.

In this Memorial I have endeavoured to address myself to every point urged against me at the trial, and which may seem to require explanation; and I humbly hope, Sir, that, precious as your time is, that you will favour my statement, and the documents by which it is supported, with your patient consideration. If this be done, I do feel a sanguine hope, that you will be satisfied that I am indeed innocent of the charge for which I am suffering. When at Millbank I earnestly prayed to be allowed personally to submit my books and papers to the prosecutors, and to explain not only the circumstances which had been urged against me, but any others that might have influenced the minds of those by whom the prosecution was conducted. I trust, therefore, that no new *ex parte* statements, which I have now no opportunity of answering (although I am totally ignorant of any such) will be permitted to influence your mind.

If it should still appear to you, Sir, that I have betrayed in this unhappy business any degree of negligence, or error of judgment, allow me to remind you, that *not one of the parties innocently connected with it can be wholly absolved from a similar charge*, and that I have already paid a fearful penalty for it—not only in the wreck of property, connection, and a position of honour and happiness, but by mental and bodily sufferings of no ordinary kind. For four months I was a prisoner at the Compter, for three weeks at Newgate, for two months in the gloomy abode at Millbank, for four months in that horrible dungeon, a convict prison ship, and here I am doomed to the most degrading and loathsome labour, with food that scarcely sustains nature. I am now in the hospital, and in so reduced a condition, that it is extremely doubtful if I shall be alive when the result of this appeal shall be brought to this scene of misery; but if my life should be spared, I shall then have endured two years of imprisonment, illness, degradation, and wretchedness in every form. + [+ The miserable circumstances under which this Memorial was prepared, and the wretchedness of my condition in Norfolk Island, will be seen by a paper in Dickens's Household Words, No. 124, entitled "Transported for Life."]

In praying for the restoration of my liberty, it will perhaps not be regarded as impertinent, if I show that whilst by unwearied industry I acquired for myself an honourable position, and one of still greater promise, I was not indifferent to the welfare of others and the general progress of society. Immediately prior to my leaving Tonbridge, I projected and established a popular Literary and Scientific Institution there. In London, I projected and established "The Legal Discussion Society," of which I was afterwards elected honorary secretary and treasurer. For the six years prior to my apprehension I had been an active member of the committee of the "Southwark Literary

Institution.” I had also the honour to co-operate with Lord Brougham and the late Dr. Birkbeck in founding the “Adult Instruction Society.” At the suggestion of some benevolent persons I became the honorary secretary to “The Builders' Benevolent Institution,” to which, upon my personal application, the Marquis of Westminster became the patron. I prepared a code of laws for its government, and performed a mass of initiatory labour for this infant charity. Those who know me can also bear witness to my prompt co-operation in every philanthropic object, to the utmost of my slender means and humble abilities. The respectable gentleman to whom I served a continued clerkship of seventeen years attended my trial, and proved that during the whole of that period my conduct was most exemplary. The unblemished character which I have since borne, both as a member of society and of my profession, was proved upon the oaths of numerous witnesses—barristers, solicitors, merchants, and other gentlemen of rank and character.

In the earnest hope that you will be pleased to submit my case to the favourable consideration of her Most Gracious Majesty, as one deserving the exercise of her blessed prerogative, and that I shall be restored to that society whose laws I have never in the slightest degree offended, and of which, though a humble, I have not been altogether a useless member, I have the honour to remain, with profound respect, Sir, your most obedient and very humble servant,

WILLIAM HENRY BARBER.

To the Right Honourable Sir J. R. G. GRAHAM, Baronet, &c. &c.  
Norfolk Island, 10th December, 1844.

## Appendix 36 Statement of Naylor and Smith, 28 January 1845

### REPORT OF AN INVESTIGATION AT NORFOLK ISLAND BY THE REV. T.B. NAYLOR (CHAPLAIN AND JUSTICE OF THE PEACE), AND DEPUTY ASSISTANT COMMISSARY GENERAL SMITH.<sup>78</sup>

We, the undersigned, Thomas Beagly Naylor (Chaplain of Norfolk Island and J.P.), and Deputy Assistant Commissary General John William Smith, in charge of the Commissariat at Norfolk Island, having, on the arrival of the ship *Agincourt*, had peculiar reasons for taking a deep interest in the case of William Henry Barber, who was transported by that vessel as an accomplice in the crime of forging a will, have, during a period of several weeks, devoted ourselves voluntarily to an anxious inquiry into the subject, and the result is, a strong conviction in our minds of his innocence; a conviction which we beg with great deference and submission thus to record, in the hope that, coupled with other testimony adduced since the trial, it may lead to a favourable reconsideration of his case, as prayed for in a memorial addressed by him to her Majesty's Government.

Our view of the case has been greatly influenced by the explanations elicited at different times from Barber himself, when pressed very closely upon those points, which, according to the published reports of the trials, seemed in our opinion to weigh most heavily against him. The candour and apparent sincerity with which he has answered us can, of course, only be duly estimated by personal observation like that we have had. We feel perfectly satisfied with the result, and accordingly venture to recommend to serious attention these explanations as embodied in his present statement.

But the strongest point in his favour is, perhaps, the confessions of Fletcher, who may be regarded as the principal party to the forgery in question. This man has been strictly examined by us, both separately and in Barber's presence. His testimony and answers, though given reluctantly, as well as with a feeling of decided hostility towards Barber, go fully to establish the entire innocence of the latter. That Fletcher originated the several cases of fraud cannot, we imagine, be doubted. He admits distinctly that they were introduced by him to Barber, when so far completed as to enable Barber in his professional capacity to pass them at both Doctors' Commons and the Bank; that he himself had a previous knowledge of the parties who personated the claimants, while Barber had not; that, in each of the four fictitious cases, a different member of the same family was thus employed, with a view to blind Barber as well as others; that the preliminary correspondence in the case of Miss Slack was conducted by Barber under his instructions, and, as his solicitor, that Barber placed full reliance upon him as a man of wealth and respectability; that Barber derived no other advantage from these cases but fair professional fees; that, in the case of the six hundred sovereigns, viewed as involving so much suspicion against Barber, he (Fletcher) took them away from Barber's office, in company with and for the false claimant, Mrs. Sanders; and, in short, there never was, directly or indirectly, the remotest degree of collusion between Barber and himself, or between Barber and Fletcher's accomplices, in a guilty knowledge and perpetration of these frauds.

This confession, though more detailed, is, in fact, only a reiteration of that made on board the *Agincourt*, and might perhaps be somewhat superfluous, were we not able, from close personal observation, to confirm the opinion of the surgeon superintendent, that it may be relied upon so far as Barber is concerned; and that there is not, nor does there appear to have been at any time, a secret combination between Barber and Fletcher to defeat the ends of justice; but, on the contrary,

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<sup>78</sup> BB107-109 (88-90). The handwritten statement is at HO200-202.

there is in Fletcher's manner, in his statements, and in his apparent motives, such a mixture of selfishness and duplicity, as to leave no doubt on our minds, both of his capability to originate these frauds, and to sacrifice one who might either oppose his interest, or, by an imperfect, because unintentional concurrence in the nefarious plans, be the means of leading to their detection.

From the supposition that Barber, being under pecuniary obligation to Fletcher, might have been induced, without directly participating in, nevertheless to have connived at the frauds, we have taken pains to ascertain the exact amount and nature of such obligations, and the result, so far from being prejudicial to Barber, has contributed almost more than anything else to confirm our opinion of his innocence. It is most improbable that Barber would have allowed himself to have been pressed for payment of the small sum we have ascertained he borrowed from Fletcher, at a high rate of interest, if he had been cognizant of schemes which would have placed Fletcher so completely within his power.

In thus recording our humble opinion of Barber's innocence, we must disclaim any intention of impugning the verdict of the jury before whom he was tried,—a verdict which, we doubt not, was a most conscientious one, as far as the legal evidence went. We have, as before stated, derived our impression from circumstances of subsequent occurrence, and unavailable to the court at the time, and may add our belief that if Fletcher had been examined as a witness, the result of the trial would have been favourable to Barber: for, notwithstanding the corruptness of Fletcher's character, he must have been not only compelled to admit, as he has to us, A MASS OF FACTS *incompatible with Barber's guilt, as shown in the Memorial*;<sup>79</sup> but at the same time detected in a course of prevarication sufficient to remove all idea of collusion, and thus to stamp his reluctant testimony with authenticity.

Given under our hands, at Norfolk Island, this 28th day of January, 1845.

T. BEAGLY NAYLOR, Chaplain.

J. W. SMITH, D.A.C.G.

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<sup>79</sup> In the original handwritten statement, there is no emphasis and some words are in parentheses: 'a mass of facts incompatible with Barbers [sic] guilt (as shown in the Memorial) but': HO202.

## Appendix 37 Statement (2) of William McCallum

### Statement of William McCallum (2) purportedly 20 February 1845<sup>80</sup>

Norfolk Island, Febry 20<sup>th</sup> 1845. Being requested to set forth the circumstances under which Joshua Fletcher's confession of the 2nd of July last was made I beg to state that having read his previous confession on the 28th of June I was induced to read the report of Barbers Trial and afterwards to speak to him on the subject. The explanation he gave and manner in which it was given bore as I thought so forcibly the stamp of truth and at the same time explained so completely and naturally the points of suspicion upon which he appeared to have been convicted that I felt constrained to speak to Fletcher about it. There was an evident reluctance upon on his part to enter into particulars but I urged upon him in the most earnest manner the duty of declaring the truth and the answers which he gave me entirely confirmed my impression of Barbers innocence. After much pressing he allowed me to commit to writing the purport of his admissions. He read my draft with scrupulous attention and made some slight alterations. After making a fair copy of it I accompanied him to the Surgeon Superintendent who on reading it said "Fletcher is this true?" "Yes" he replied "it is quite true Sir" Why then "continued the Surgeon did you not declare this at the trial?" Fletcher answered "I had no opportunity being jointly indicted with Barber". It was quite evident that this declaration emanated from no kindly feelings towards Barber but rather that he was ashamed to deny (what on close examination he could not conceal) the truth. I was in daily communication with both of them during the entire voyage, throughout which Barber never concealed his abhorrence of Fletcher, and as may therefore be supposed they had no other intercourse than that which the situation forced upon them. My interest and my sympathy having become considerably [penlisted] in Barbers favour (altho' a perfect stranger to me) I was induced to [converse] severally very fully on the transactions for which Barber is suffering and I declare most solemnly that my previous impression of his innocence became more and more confirmed by every fact that I solicited.

William McCallum

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<sup>80</sup> HO242, in Barber's handwriting.

## Appendix 38 William McCallum's statement (3), 10 January 1845

### A. In BB (1853, 9<sup>th</sup> ed.)<sup>81</sup>

STATEMENT OF WILLIAM M'CALLUM, WHO COMMITTED FLETCHER'S SECOND STATEMENT TO WRITING.

Being desired to set forth the circumstances under which the statement of Joshua Fletcher, dated the 4th July last, was made, I beg to state, that having seen in the newspapers his first declaration, I was induced to speak to Barber on the subject, and the strong impression of his innocence, which I received from his own frank and clear explanation, being entirely confirmed by subsequent conversations with Fletcher, I urged upon the latter the duty of explaining the details of the business in verification of his statement. He seemed extremely reluctant to say anything that might possibly increase public prejudice against himself, and it was clear to me that he was far from disposed to do Barber more than the most meagre justice. I however committed his statement to writing, and he afterwards read it with scrupulous attention. Having made some corrections, I accompanied him to the surgeon superintendent, who, when he had perused it, asked Fletcher, in a serious manner, "If it was really true " Fletcher said, "Yes, Sir, it is quite true." "Why, then," said the surgeon, "did you not declare this at the trial?" Fletcher said, "I had no opportunity, being *jointly indicted* with Barber."

The scorn and abhorrence with which Barber has always expressed himself in reference to Fletcher has been quite in keeping with his manner towards him. As a natural consequence, a feeling of marked hostility manifested itself throughout the voyage, and which evidently continues to this moment. I myself have been upon terms of civil intercourse with Fletcher, and I solemnly declare that every circumstance which I could elicit from him in reference to the business for which Barber is suffering, tended to confirm and illustrate the perfect innocence of the latter.

WILLIAM M'CALLUM.

NORFOLK ISLAND,

January 10th, 1845.

### B. Same - showing changes from Statement (2)

Being ~~requested~~ **desired** to set forth the circumstances under which **the statement of** Joshua Fletcher's ~~confession of~~ **, dated** the 2nd of July last, was made, I beg to state that having ~~read his previous confession on the 28th of June~~ **read in the newspapers his first declaration**, I was induced to ~~read the report of Barbers Trial and afterwards to speak to him~~ **Barber** on the subject, **and the strong impression of his innocence, which I received from his own frank and clear explanation, being entirely confirmed by subsequent conversations with Fletcher,** ~~The explanation he gave and manner in which it was given bore as I thought so forcibly the stamp of truth and at the same time explained so completely and naturally the points of suspicion upon which he appeared to have been convicted that I felt constrained to speak to Fletcher about it. There was an evident reluctance upon on his part to enter into particulars but I urged upon him~~ **the latter** in the most

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<sup>81</sup> BB (1853, 9th ed.) 124-125 (105-106). The dating is dubious.

earnest manner the duty of explaining the details of the business in verification of his statement. He seemed extremely reluctant to say anything that might possibly increase public prejudice against himself, and it was clear to me that he was far from disposed to do Barber more than the most meagre justice. ~~declaring the truth and the answers which he gave me entirely confirmed my impression of Barbers innocence. After much pressing he allowed me to commit to~~ I however committed his statement to writing, and he afterwards read it with scrupulous attention ~~and made some slight alterations. After making a fair copy of it~~ Having made some corrections, I accompanied him to the Surgeon Superintendent who, when he had perused ~~on reading it said~~ , asked Fletcher, in a serious manner, "Fletcher is this true If it was really true?" Fletcher said, "Yes" ~~he replied~~ "Sir, it is quite true Sir." "Why then," said the Surgeon "did you not declare this at the trial?" Fletcher ~~answered~~ said, "I had no opportunity *being jointly indicted* with Barber". It was quite evident that this declaration emanated from no kindly feelings towards Barber but rather that he was ashamed to deny (what on close examination he could not conceal) the truth. I was in daily communication with both of them during the entire voyage, throughout which Barber never concealed his abhorrence of Fletcher, and as may therefore be supposed they had no other intercourse than that which the situation forced upon them. My interest and my sympathy having become considerably [enlisted] in Barbers favour (altho' a perfect stranger to me) I was induced to [converse] severally very fully on the transactions for which Barber is suffering and I declare most solemnly that my previous impression of his innocence became more and more confirmed by every fact that I solicited.

The scorn and abhorrence with which Barber has always expressed himself in reference to Fletcher has been quite in keeping with his manner towards him. As a natural consequence, a feeling of marked hostility manifested itself throughout the voyage, and which evidently continues to this moment. I myself have been upon terms of civil intercourse with Fletcher, and I solemnly declare that every circumstance which I could elicit from him in reference to the business for which Barber is suffering, tended to confirm and illustrate the perfect innocence of the latter.

WILLIAM M'CALLUM

NORFOLK ISLAND

January 10<sup>th</sup> 1845

## Appendix 39 Letter from Barber to Sir James Graham, 5 March 1845

### Letter sending Memorial of December 1844<sup>82</sup>

To The Right Honorable James Robert George Graham Baronet

Sir,

In submitting to you my [present] memorial I have to apologise for adopting the comparatively familiar style of a letter instead of the ordinary one; but the latter would have been less perspicuous and more diffuse. As more respectful to you Sir I should have written it entirely with my own hand but my recent mental and bodily sufferings have produced a weakness of sight which renders me unequal to the task. In this statement I have employed my utmost care and thought to render it as brief as a due regard to completeness would permit. To the facts which I have set forth and the Documents, by which they are supported, especially the annexed Report, I most anxiously entreat the favor of your early and patient attention. Mr Naylor as chaplain and as a magistrate of Van Diemen's Land and also Mr. Smith have in the discharge of their official duties for many years past necessarily had great experience of prisoners.

These gentlemen were perfect strangers to me and in their investigation, which was purely voluntary, they have spared no pains to discover whether I was a confederate or Fletcher's or his confiding and unsuspecting instrument. I think, Sir, you will admit that they have adopted the only means by which that question could be duly answered, and that neither the impartiality of their judgment nor the grounds upon which they have formed it can be reasonably impeached.

Anxiously awaiting the result of this appeal to the Justice and the magnanimity of Her Majestys Government

I have the honor to remain

Sir,

your most obedient and very

humble servant

William Henry Barber

Norfolk Island

5 March 1845

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<sup>82</sup> HO258-259.



## Appendix 39A Letter from Naylor, different versions, September 1845

### 1. Original<sup>83</sup>

Norfolk Island, 3rd September, 1845.

In leaving Norfolk Island of which I have now been for some years the chaplain, I owe it to public justice the duty of recording my firm conviction of the perfect innocence of William Henry Barber, now suffering on it as a prisoner under a sentence of transportation.

Since his arrival I have not ceased to follow up a series of inquiries into circumstances connected with his case. In addition, I have heard the reluctant acknowledgments of Joshua Fletcher, the guilty author of the frauds, placing beyond the possibility of doubt the entire innocence of Barber.

My exertions shall be continued for his extrication. I deeply lament his truly wretched condition here, and would gladly have seen it ameliorated. I have never known a prisoner of the Crown exposed to greater wretchedness. I rejoice to be able to add, I have never seen an instance of more dignified suffering, accompanied by invariable consistency of conduct – and nothing will give me greater pleasure than a renewal of his acquaintance under happier circumstances.

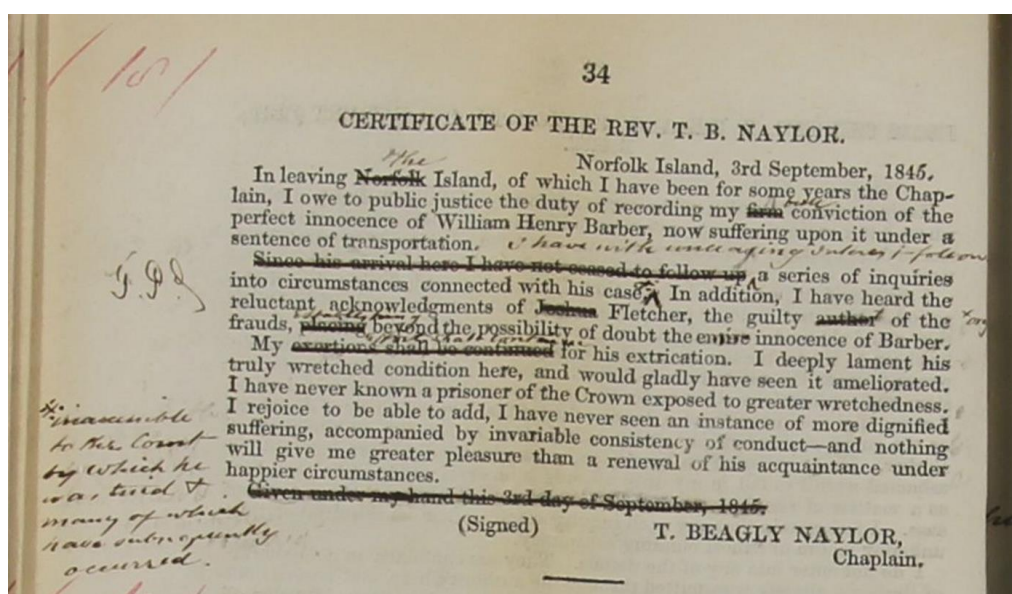
Given under my hand this 3<sup>rd</sup> day of September, 1845.

(Signed)

T. BEAGLY NAYLOR.

Chaplain

### 2. Pamphlet version<sup>84</sup>



<sup>83</sup> HO301. BB (1854) Pamphlet, 34. This is inferred from the Pamphlet version.

<sup>84</sup> HO301.

### 3. Published version<sup>85</sup>

Norfolk Island, 3rd Sept. 1845.

In leaving ~~Norfolk~~ ~~the~~ ~~island~~ of which I have now been for some years the chaplain, I owe it to public justice the duty of recording my ~~firm~~ ~~full~~ conviction of the perfect innocence of William Henry Barber, now suffering on it as a prisoner under a sentence of transportation. ~~Since his arrival—I have not ceased to follow,~~ ~~with unceasing interest, followed~~ up a series of inquiries into circumstances connected with his case ~~inaccessible to the court by which he was tried, and many of which have subsequently occurred.~~ In addition, I have heard the reluctant acknowledgments of Joshua Fletcher, the guilty ~~author~~ ~~originator~~ of the frauds, ~~placing~~ ~~establishing~~ beyond the possibility of doubt the ~~entire~~ innocence of Barber. My efforts shall ~~be~~ continued for his extrication. I deeply lament his truly wretched condition here, and would gladly have seen it ameliorated. I have never known a prisoner of the Crown ~~exposed~~ ~~who has been subjected~~ to greater wretchedness : I rejoice to be able to add, I have never seen an instance of more dignified suffering, accompanied by ~~invariable consistency of~~ ~~invariably consistent~~ conduct. ~~—and nothing~~ It will ~~give~~ ~~afford~~ me greater ~~real~~ pleasure ~~than a renewal of~~ ~~to continue~~ his acquaintance under happier circumstances.

~~Given under my hand this 3<sup>rd</sup> day of September, 1845.~~

(Signed)

T. BEAGLY NAYLOR.

~~Chaplain~~

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<sup>85</sup> BB (1853 9<sup>th</sup> ed.) 109-110 (90-91).

## Appendix 40 Letter Barber to *Hobart Courier*, May 1847

### TO THE EDITOR OF THE "COURIER."<sup>86</sup>

Hobart Town, 21<sup>st</sup> May, 1847.

Sir, - Being under the necessity of throwing myself upon the generosity of the inhabitants of Hobart town for the means of returning to Europe, it may be proper that I should submit to them a brief outline of the circumstances which involved me in the ruin and misery which it has been my lot to suffer. With this view I respectfully solicit of your kindness the insertion of this letter in your columns.

About eleven years ago I commenced practice in London, after serving a clerkship of sixteen years, with the highly respectable firm of Scoones and Son, at Tonbridge, in Kent, in which house a brother of Sir George Gipps, late governor of New South Wales, also served his articles. In 1841, I received into partnership Mr. Merrick Bircham-Bircham, a gentleman from Norwich; our offices were at 28, New Bridge-street, Blackfriars.

In the autumn of 1842, 'Joshua Fletcher' introduced to our office the case which afterwards became so celebrated as the 'Slack forgery.' Fletcher was a retired surgeon, and a man of opulence. He had been a client of the house several years, his business consisting chiefly in the investment of his capital in the purchase of houses and in mortgages. He was also a shipowner, which led to some important suits for freight and demurrage, in which Sir Thomas Wild was specially retained. Both myself and partner had implicit confidence in Fletcher's integrity.

He represented that there was a sum of £6000, and a further sum of £3,500, stock in the Government funds standing in the name of 'Anne Slack, of Smith-street, Chelsea,' and that the dividends of the latter sum not having been received for ten years, the entire amount, £4,500, had been transferred to the Commissioners for the reduction of the National Debt, as property unclaimed.

He professed, therefore, to be desirous of discovering the owners, with a view to putting them in possession of it.

He said there was a lady, named Anne Slack, residing with her brother, Captain Foscett, at Abbott's Langley, and he instructed us as his solicitor to communicate with the Captain in reference to her identity. This led to a correspondence between myself and Captain Foscett, and also with the lady's solicitor.

Fletcher had also informed us that the owner of the £3500 stock had, *twelve years previously, executed a power of attorney*, enabling her agent (Mr. Hulme, of the firm of Lloyd [sic] & Co., bankers, London,) to receive the dividends for her, which he did for a year or two. In testing the identity of Miss Slack, of Abbott's Langley, AGE was therefore a material feature. Upon inquiry of Captain Foscett, on this point, he told me she was only 27 (while she was in fact 37.)

This created great doubt of her identity, inasmuch as twelve years previously she would have been a minor, and could not, therefore, have been legally competent to execute a power of attorney.

But he also mentioned a circumstance in her favour, namely, that she had once lodged in 'Smith-street, Chelsea.' To determine the question, therefore, I procured her handwriting, and gave it to

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<sup>86</sup> Letter published in the Hobart Courier of 26 May 1847, [nla.news-page636690.pdf](http://nla.news-page636690.pdf)

Fletcher, who said he had the means of getting it compared with the writing of the owner of the stock in the bank books. He returned it in a few days, stating that it was wholly dissimilar from the writing of the owner of the unclaimed stock.

Balancing, therefore, these two positive facts, the minority of Foskett's sister-in-law at the time when the owner of the property executed the power of attorney, and the alleged variance in the handwriting against the merely presumptive fact of temporary residence in 'Smith-street Chelsea,' I regarded the latter circumstance as a coincidence only, and concluded that the owner was a party who had yet to be discovered, and wrote to Miss Slack's solicitor to that effect

About two months afterwards Fletcher called at the office, and said that he had met with a Miss 'Emma Slack,' whose title to the fund was beyond dispute, as she had the will of her aunt, who had lately died, bequeathing her this very property, and that he would introduce her to our office as a client. A few days afterwards he called with a lady-like person in mourning, who produced the will, together with a certificate of her aunt's death at Pimlico. Both documents appeared perfectly regular, and I unhesitatingly accompanied the executrix to our proctor, where the will was proved. This was the particular act upon which my subsequent conviction rested.

Probate being granted a few days after, my partner (for I was then on circuit at the Assizes) lodged the probate at the bank, with the usual application, to have the stock transferred into the name of the executrix. In about a fortnight the bank solicitors, Messrs. Freshfield, expressed themselves quite satisfied with the claim, and caused the stock to be retransferred accordingly.

The executrix, shortly afterwards, received the entire amount of stock and dividends, amounting to £4600. Our law-bill for submitting the claim to the bank, and preparing the usual residue account for the stamp-office, was £13.

Whilst the business was in progress, Fletcher mentioned that the bank had in error treated the executrix as the party entitled *to both the £6000 and the £3500* stock, Although no claim whatever was made for the former, and having made both amounts 'dead,' as it is technically called, there might be some confusion when Miss Slack, of Abbott's Langley, next applied to receive her dividends of the £6000.

Upon the 9<sup>th</sup> of November, 1843,<sup>87</sup> about eight months after the settlement of the executorship matter, Mr. Freshfield, the solicitor of the Bank of England, called at my office, and enquired into the business. I produced all the papers and our office books, in which the original correspondence with Captain Foskett was entered, as well as the recent matter of the executorship. He said that the lady with whose friends I had first been in communication was the right party. I, relying on the statement Fletcher had made, and the other grounds above stated, upon which I had rejected Captain Foskett's sister-in-law's identity, told him I was of a different opinion; and that I believed he would discover that an error at the Bank had misled him. I added that the executrix had been introduced by a respectable client. He demanded his name and address. I paused about this, when he repeated his request in a manner so supercilious and dictatorial that I resented it with some indignation, and told him that at present I should positively decline to give up a client's name who seemed likely to be annoyed under a gross misapprehension; but that if he would call in a day or two I might feel justified in furnishing it. He then left with an air of much displeasure at my firmness, or, as he probably regarded it, obstinacy.

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<sup>87</sup> It was of course on 15 November that James Freshfield called on William.

I wrote for Fletcher, who, two days after, called at the office, when I told him of Mr. Freshfield's visit, and discussed with him the possibility of our having arrived at an erroneous conclusion in rejecting the identity of Captain Foskett's sister-in-law, and of his having been imposed upon by the subsequent claimant. Fletcher, however, mentioned many circumstances in support of the *bona fide* nature of Miss Emma Slack's title, and particularly reminded me of the previous intimation of the error in the bank books, upon which point he promised to obtain further and [precise] information. A few days afterwards, he called, and assured me that the error had been corrected, and that I should hear no more of it. I believed him implicitly; and considering also that if Mr. Freshfield was still unsatisfied he would apply for the further information which I had partly promised him, the matter completely passed from my mind amid the multifarious occupation of an extensive London practice.

On the 9th of December, however (three weeks after Mr. Freshfield's visit,) I was apprehended, about nine o'clock in the morning, on my way to my office, and but a few paces from it. I was taken to the Mansion House, where I was searched; my pocket-book, all my papers, and the keys of my desks were taken from me. I was then locked up for four hours, and refused access to or communication with any one. Meanwhile my office was ransacked by Forrester, the officer, and Mr. Freshfield's clerks.

The papers in Slack's case were found open on a library table, where I had left them when Mr. Freshfield called. These, with my diary – a variety of letters and other papers, – was seized and carried away, and I could never obtain access to them until after my conviction. After my office had been searched I was taken before the Lord Mayor. I then sent my partner, Bircham, for Fletcher, to explain the transaction, and especially as to his knowledge of the executrix. In his examination-in-chief he gave the same account of the matter as he had given me; but, upon cross examination, his falsehood and villany [sic] became manifest.

From that moment to the present I have never concealed my abhorrence of him. I have never so much as spoken to him, except in the presence of gentlemen, when under examination. The witness upon whom I had thus relied for immediate release only increased my difficulties. Both of us were remanded for further examination. For four months the prosecutors delayed the trial of the cause, during which I was refused bail and kept in a wretched cell in the depths of winter, the snow drifting in upon me as I sat, shivering with cold, preparing my defence; whilst my prosecutors were using their vast, unlimited means to make good the blow they had struck at me.

This was their only difficulty. The three other parties, Fletcher's confederates, Mrs. Sanders, the fictitious 'Emma Slack,' her husband, William Sanders, and Mrs. Sanders's sister, Mrs. Dorey, were all successfully apprehended, and every one of them offered themselves as witnesses for the crown [sic]; but as they were unable to give any evidence to criminate me (on the contrary, William Saunders, his wife, and Mrs. Dorey, all declared my innocence) their testimony was rejected. At length I was brought to trial, my prosecutors being compelled to rely, as they confessed, on the chance of convicting me upon '*suspicion!*'

In order to show whether I was the accomplice of these parties, or of either of them, or whether I was their unsuspecting professional agent, it was indispensably necessary that I should place them in the box. By Lord Denman's Act, then recently passed, it was enacted, that, in order to discriminate between guilty and innocent parties who might be engaged in any particular transaction, the evidence of persons convicted of felony should be receivable in reference to other parties involved. To have the benefit of this, I applied to be tried *separately*; but the judge held that this was optional with the prosecutors, who objected for reasons but too manifest.

Well, Sir, after a trial which lasted ten days, this unequal struggle terminated in my conviction. The *Britannia*, referring to the evidence, said –

‘This, to our apprehension, is clear, that if a different course had been adopted by Barber’s counsel, he must have been acquitted; for, although the indictment was supported by strong circumstances of suspicion, it was not fully sustained by the testimony adduced.’ – London, 25<sup>th</sup> May, 1844.

So thought my very able counsel, Mr. Wilkins; and relying upon that opinion, he deemed it unnecessary to call the clerks of the house and other witnesses who were in attendance, or to put in the office books or my correspondence with Fletcher, under the documentary evidence which Mr. Parry, who advised upon it before trial, declared to be, ‘in the highest degree, important.’

I do not propose here to consider the correctness of Mr. Wilkins’s judgment upon this important point in the history of my case; I would merely observe that the court had not a full view of the facts, and that it rendered it necessary for me, subsequently, and under circumstances of extreme difficulty, and even of peril, to bring them under the notice of the Government.

Every one of the intelligent persons to whom I have had access since the trial, and who has attentively read the report of it, has declared his conviction that, although many circumstances, taken separately and unexplained, were suspicious, there was not one which was absolutely incompatible with my innocence, whilst there were many which were wholly irreconcilable with my supposed guilt.

The point mainly relied upon by the judge, as indicative of a guilty knowledge, was the fact that the residence of the owner of the stock was ‘Smith-street, Chelsea.’ and Captain Foskett’s sister-in-law had once lodged in that street. The important circumstances as to her *age* and *handwriting*, previously mentioned, positive facts, which seemed conclusively to negative the mere presumption raised by her temporary lodging in Smith-street, I could only prove through Fletcher, is evidence the prosecutors denied me; neither could I explain, but by exposing this man to the rack of an examination in the box and wringing the truth from his reluctant lips, the grounds upon which I was led to believe that Mr. Freshfield’s inquiry arose from an error in the Bank books.

The fact most strongly pressed by Mr. Erle for the prosecutors was my *refusal to give Fletcher’s name*. No doubt this led to my apprehension, and that, but for this unflinching performance of what I conceived, and still conceive, was my duty to a client whom no solicitor would have distrusted, I should have been put forth as a respectable witness like the proctor, the stock-broker, or any of the other professional men through whose hands the business successfully passed: but I submit to the candour and the dispassionate judgment of your enlightened readers whether, if I had really known that the forgery had been committed, I should not have secured my own immunity by handing Fletcher over to justice, and becoming myself the chief witness, with the advantage of explaining my own conduct in the box?

After the trial I repeatedly petitioned the Government to have Fletcher and his three confederates separately examined, that their four statements might be compared with each other, and with mine; and that I should be permitted an opportunity of personally explaining my part in the transaction, and of submitting my books and papers to the prosecutors.

All these appeals were, however, unheeded.

On my arrival on board the *Agincourt*, at Woolwich, Fletcher, shrinking, as I believe from a meeting and a voyage without some atonement for the misery his treachery had brought upon me, made the following confession:-

June 28<sup>th</sup>, 1844.

'I solemnly declare that, to the best of my knowledge and belief, William Henry Barber had no guilty knowledge that the will of Anne Slack was a forgery, or that it was otherwise than a legitimate and proper matter of business. As such it was introduced by me to him, as stated in my first examination at the Mansion House; and I further declare that, to my knowledge and belief, he had no guilty knowledge of either of the cases which have recently formed the subject of indictment. I make this declaration with no other motive than to do an act of justice to Mr. Barber as far as lies in my power.

'(Signed.)

JOSHUA FLETCHER.

'Witness – Matthew Hall Cuttress.'

Upon this the *Times* of the 1<sup>st</sup> July, 1844, remarks:-

'THE CONVICTS BARBER AND FLETCHER. – The above document, forming a declaration of the innocence of Barber by his fellow convict Fletcher, has been submitted to us for publication by Mr. Bramall, of Verulam Buildings, the solicitor on behalf of Barber in the late trials. It appears to be a complete and apparently truthful exculpation, on behalf of Fletcher, of his supposed partner in the will forgeries and their attendant frauds, and is made at a time when disguise or falsehood would be vain and additionally iniquitous.'

The appearance of this confession in all the papers led to some conversations on board between Fletcher and some intelligent prisoners, and to the following further confession. From the *Times*, 4th July, 1844:-

'It may be proper that I should state, in furtherance of the declaration I made on the 20th [sic] June last, that, to the best of my knowledge and belief, William Henry Barber had no knowledge whatever of Mrs. Richards than as Miss Stewart, of Mrs. Dorey than as Miss Burchard, or William Sanders than as Thomas hunt, or of Lydia Sanders than as Emma Slack; they having respectively represented themselves to him as Elizabeth Stewart, Eliza Burchard, Thomas Hunt, and Emma Slack, In my presence. With regard to the will of Anne Slack, he could have no knowledge whatever of it until Mrs. Sanders, personating Emma Slack, produced such will to him, which he did in my presence; and from the manner in which the several matters were introduced to him, and in which appearances were presumed, there was nothing to excite the suspicion of any prudent solicitor. I was a client of Barber's of some years standing, and of independent property: as such he had known me from the time he first became my solicitor. He read the will in question with attention, and asked several questions, which Mrs. Sanders answered without appearance of embarrassment; and to satisfy his enquiries she produced to him a certificate of register of her aunt's death at Pimlico; and I feel further bound to state, that Mrs. Sanders presented herself to Mr. Barber disguised, wearing light hair and affecting to have the gout in her hands and feet, which seemed to support her alleged relationship to the assumed testatrix. (The certificate set forth that the deceased died of gout in the stomach.)

And, to the best of my knowledge and belief, Mr. Barber had no share of or other participation in the proceeds of the above transactions, or either of them, beyond his proper professional remuneration. I should also state, that he had been concerned for me as my solicitor generally, and that I had employed him to negotiate with several parties whom I had traced out as the true owners of unclaimed dividends, and who were put into possession of such property. He had, therefore, no reason to suspect, as far as I know, that the cases for which he has been prosecuted were in the slightest degree irregular or improper. It was under my instructions that he wrote to Captain Foskett, and the object of which was to ascertain if his sister-in-law was the owner of the stock. I reported to Barber that she *was not*, as her handwriting was wholly dissimilar, and as the owner of the stock had executed a power of attorney ten years before, which Captain Foskett's sister-in-law would have been incompetent to have done, she being at that time, from Captain Foskett's own statement, a minor. The report I so made to Mr. Barber was founded upon that which I received from Christmas, the bank clerk. If the application made by Barber to be tried separately (so that he might have elicited the whole truth, by calling myself and the other parties accused) had not been resisted by the prosecutors, he must have been not only acquitted, but exonerated from the slightest culpability. As I understand it has been stated that I have refused to admit Mr. Barber's innocence, I feel called upon to contradict this; and to state that I have only objected to sign or declare that which might have a tendency to prejudice myself.

‘(Signed)

JOSHUA FLETCHER.

‘The above statement of Joshua Fletcher was committed to writing by me, under his direction, on board the *Agincourt*, at Woolwich, the 2nd of July, 1844.

‘(Signed)

‘WILLIAM M'CALLUM

‘Signed and declared by Joshua Fletcher,)

in the presence of Charles Henry )

Fuller, R.N. Surgeon, Superintendent )

of Convicts on board.’ )

This, as well as the preceding, was transmitted to Sir James Graham; and on Sunday, the 7th of July, I was informed that he was in correspondence with Mr. Justice Williams on the subject. By 6 o'clock in the morning of the 8th, however, the *Agincourt* was under weigh. Upon my arrival at the Cape, the *Times* was brought to me containing the following:-

‘I, William Saunders, now under sentence of transportation for seven years, and about to leave my country, am desirous of reiterating all my former statements of my firm belief and conviction of the complete innocence of William Henry Barber of any participation or guilty knowledge whatever of the late transactions in which I or my wife, Lydia Sanders, were concerned, or that he received one farthing more than his fair professional remuneration.

William Henry Barber was an utter stranger to me until introduced to him by Fletcher as Thomas Hunt; nor did I after see him, or have any subsequent communication with him, until my first examination at the Mansion House.



‘(Signed) ‘WILLIAM SANDERS.

‘From the *Times* of July 12<sup>th</sup>, 1844.’

September 23rd, 1844

Given under my hand on board the above ship, Simond's Bay, Cape of Good Hope.

(Signed) CHAS. HY. FULLER,  
Surgeon R.N., Superintendent.<sup>88</sup>

<sup>88</sup> This is one of three versions with minor differences. The other two are HO71-72 and BB (1853, 9th ed.) 124 (105).

March, 1845. The conditional pardon which I have received is unaccompanied by any explanation whatever. The Colonial Government is in possession of no information on the subject, nor am I. I can only therefore infer, that it is the result of enquiries instituted upon the arrival of my memorial and the other documents which were transmitted from Norfolk Island. The following appeared in the *Times* of the 24<sup>th</sup> June last:-

‘THE CONVICT BARBER. – From letters and papers recently received from Barber, now in Norfolk Island, under sentence for the will forgeries, it appears that he still clings to the hope of establishing his innocence, and obtaining his emancipation. He appears to have used the most unremitting exertions for such objects, and has succeeded in enlisting in his favour clergymen, magistrates, military officers, and other persons, through whom investigations have been conducted and certificates given declaratory of their conviction of his innocence, the particulars of which have been transmitted to Sir James Graham, with a view to obtaining an official investigation.’ – *Globe*.

About ten days afterwards another paragraph appeared, in which it was stated that the new Government had directed the Attorney-General to investigate the matter.

In the *Weekly Despatch* of the 6<sup>th</sup> December, 1846, I notice the following:-

‘The Convict Barber, we understand, is about to receive a free pardon on condition of not returning to England.’ – *Patriot*.

On the 21st of April, whilst at Impression Bay, I received an official notification of my conditional pardon. It is by a special warrant from the Queen, dated St. James, 12 January, 1846. I have thus, Sir, endeavoured to place before your readers, without the slightest reserve, as perspicuous a narrative of my case as contracted limits will permit. My tale of injury and suffering is briefly told in my advertisement. Sixteen thousand miles from my country and friends, I appeal to the inhabitants of Tasmania to assist me in my struggle for a full measure of justice - to shorten the days of my sad exile - to hasten my return to home - to happiness - to real liberty! - I have the honour to be, very respectfully, Sir, your obedient humble servant,

WILLIAM HENRY BARBER.

## Appendix 41 Report of the Sydney Law Society 16 August 1847

REPORT OF THE SYDNEY LAW SOCIETY,<sup>89</sup>

### AFTER TEN DAYS' INVESTIGATION.

Pursuant to the resolution by which, in compliance with Mr. Barber's request, the Society undertook the investigation of his case, and formed itself for that purpose into committee, it has held daily meetings from the 29th ultimo to the 9th instant, inclusive. At these meetings the entire report of the trial of Mr. Barber, which ended in his conviction and transportation, has been carefully read through, as published in the London daily papers. Also, the report of the previous examination at the Mansion House, and various contemporary correspondence and editorial comments relating to the subject.

The Society having thus possessed themselves of the case as fully as possible, in the form in which it was presented to the jury, and the English public at the time of the conviction, they proceeded carefully to investigate the subsequently acquired evidence, and heard the explanation by means of which Mr. Barber had already succeeded in possessing the minds of so many competent judges with a full persuasion of his innocence.

The result of such investigation has been to establish the same persuasion in the minds of the Society; nor can they have any doubt that far less exculpatory evidence than has been laid before them, would have rendered it impossible for the jury to bring in a verdict of guilty against Mr. Barber.

None of the circumstances on which Mr. Barber's prosecution chiefly relied as evidence of guilt, were in fact incompatible with his innocence. Great stress was laid on the tracing to him of a bag of six hundred sovereigns, which he carried away for, or with, Mrs. Sanders, when she received the money at the Bank of England. The Society cannot see how an attorney's knowledge of his client's fraud can be inferred from an act, which, if innocent, he would have been equally, and for some reasons more, likely to have performed, namely, the carrying a heavy bag of coin for a lady who either had, or appeared to have, the gout in her hands.

Again, great stress was laid upon the circumstances which pointed out the identity of Captain Foscett's sister-in-law with the true owner of the stock, and which it is argued must have convinced Mr. Barber of such identity, and so proved his bad faith in lending himself to any other claimant. When, however, Captain Foscett cannot deny that he represented his sister's age as twenty-seven, and the nature of Messrs. Barber and Bircham's impressions of her age, derived from this source, are evident from their alluding to her as "the young lady" in a contemporary letter of business; and when it is evident that no person of such an age could possibly have been owner of the stock, it is surely too much to take it for granted against Mr. Barber, that because other strong indications of identity existed, he must necessarily have solved the mystery in favour of Miss Slack, by disbelieving what her brother-in-law, Captain Foscett, had stated upon this material fact, inventing for a lady he had never seen the different age of thirty-seven. On many other points, the peculiar position of an attorney in conducting the affairs of his client was conducive to fallacious inferences against Mr. Barber. It was assumed by the prosecution that whatever was stated as fact in Mr. Barber's correspondence, or otherwise acted on by him, such as the result of a comparison of handwriting, was a fact he had personally investigated, and of which he must himself have known the truth or falsehood; whereas every attorney, and almost every client, well knows that facts resting on clients' bare instructions are necessarily blended and confounded with those resting on personal knowledge in the common course of professional business.

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<sup>89</sup> BB (1853, 9<sup>th</sup> ed.) 119-123 (100-104).

This general consideration, although above applied only to one circumstance, will be found to clear away a large part of what appears, on a superficial glance at the evidence, to raise suspicion against Mr. Barber.

With respect to Mr. Barber's concealment of the name of his client, Fletcher, at his interview with Mr. Freshfield, it is to be observed that a reason for this concealment existed, irrespective altogether of any question of the crime of forgery; namely, the desire of Fletcher to avoid inquiry into the source of his information regarding unclaimed dividends, a source which he does not seem, judging from the testimony of Mr. Christmas, to have ever revealed even to Mr. Barber himself; nor were this separate motive absent, is it clear that an attorney should be justified in disclosing the name of a client in connection with a *prima facie* case of guilt, without first availing himself of all the means in his power to clear up the facts and accompany the disclosure with an explanation by way of antidote. A conscientious attorney might even from very scrupulosity feel bound to pause and consider before making such a revelation.

To judge of the propriety of all that fell from Mr. Barber in this conversation is not the task which the Society has undertaken, and were it so, they would have first to consider whether Mr. Freshfield's statement be sufficiently accurate or complete to enable them to form an opinion. Mr. Barber solemnly denies its accuracy, in many important respects, while Mr. Freshfield on the trial himself more than admits its incompleteness; nor could it be fairly judged of, without a knowledge even of the tone of voice and manner assumed by both parties. On the whole, it is a relief to the Society to be freed from all obligation to disentangle the perplexities in which this piece of evidence is involved, inasmuch as with the light now thrown by other means on the case, the conversation between Mr. Barber and Mr. Freshfield is in no imaginable point of view material to a decision upon the main question of Mr. Barber's innocence of the crime imputed to him.

So weak was, indeed, the case proved against him, that if the prosecutors had not resisted his application for a separate trial, the Society cannot conceive it possible that any jury could have found him guilty. The Society cannot conceive any case which more peculiarly required a separate trial. From the very nature of the case, it was scarcely possible that any one individual besides the other accused parties could possess actual knowledge whether Barber had been really the confederate or the victim of their fraud; and a sifting examination of those persons, whatever their character, was at least a safer channel to the truth, than the vague case of suspicion and remote inference, which, so far as Barber was concerned, was presented to the jury on the joint indictment. When it is also considered that the prosecution had access to Mr. Barber's diary, and had followed in vain several tracks of inquiry which might have been naturally expected to afford proof of guilt, had guilt existed; also, that in a complicated transaction of this nature, the concurrent and consistent testimony of the four other accused persons in any story exculpating Barber, so as to stand cross-examination, would have been next to a miracle, unless such story were true, and this particularly when all intercourse between them appears to have been carefully prevented from the moment of their apprehension, the refusal appears still more extraordinary, and the Society cannot but regard it as the main cause of Mr. Barber's unmerited sufferings, and a fearful exception to the usual tenderness and caution of English justice.

The Society also think, if the trials had been separate, the examination of Mr. Barber in like manner on the trial of the other parties could hardly have failed of itself effectually to have removed all doubts of his own guilt, had it existed,—a thing of infinitely greater importance in giving useful effect to exemplary punishment than the mere fact of the conviction of a supposed criminal, especially on doubtful or unsatisfactory evidence.

The soundness of these views is manifest from the conduct of the whole of the parties after their conviction, from which, under less favourable circumstances than separate trials would have

afforded, more real light has been cast on the transaction than by the judicial investigation in which a jury was called on to grope after the truth in the comparative darkness, resulting from the exclusion of the only direct testimony accessible. The Society are not indeed blind to the general worthlessness of exculpatory statements made by accused persons in favour of each other, yet they cannot but perceive that in this case the conduct of Barber and Fletcher, and the statements of the latter, stand on peculiar grounds, and are therefore entitled, especially when other circumstances concur, to peculiar weight. It is evident from the testimony of the present civil commandant of Norfolk Island, Mr. Fuller, the Rev. T. B. Naylor, and Assistant Commissary General J. W. Smith, the Rev. Thomas Rogers, Dr. Browning, and others, that Fletcher painfully felt, that but for the statements of Barber, the part he took in the transaction might have been kept out of sight, or an opportunity of escape at least have been afforded him. He, too, could not be unconscious that the admission of Barber's innocence would, by adding to the crime of which he had been convicted, that of having occasioned the ruin and conviction of a highly respectable man, expose him to the just abhorrence of every honest man, and take away all hope of mitigation.

The Society conceive the sum of Mr. Barber's offence to be that of allowing himself to be employed by a very wealthy and apparently respectable man in tracing out the owners of unclaimed dividends, a course of practice which unavoidably subjects the parties concerned to be made the dupes of artful and unprincipled persons. They do not feel entitled to express disapprobation of a course which has been adopted by men of undoubted honour and integrity, and still less to admit that it ought of itself for a moment to subject the party to the imputation of fraud, or even improper motives. It may be said that the perpetrator of such a fraud was not likely to select an honest attorney; but it is often of the greatest importance to persons engaged in nefarious practices to employ upright and honourable men, the character of whom cannot fail to avert suspicion, but who must of course be kept in profound ignorance of the evil character of the acts to be accomplished; and in this consideration may be found a sufficient motive for the various arts which were employed to blind Mr. Barber, and effectually impose upon his judgment. On the whole, the society feel an UNANIMOUS persuasion that Mr. Barber was entirely innocent of the fraud practised by Fletcher; that it is chiefly, if not wholly, in consequence of his being *shut out by a joint indictment from the most obvious and certain means of eliciting the truth*, that he has endured the disgrace and misery of conviction and unmerited punishment, and that he is entitled to every assistance in his endeavour to resume his position in society, not to speak of reparation, could any reparation be possible, or if possible, sufficient in such a case.

(Signed) JAMES NORTON, President.

SYDNEY,

16th August, 1847.

## Appendix 42 Letter from Sir John Dickinson 13 September 1847

*From His Honor Sir J.N. Dickenson [sic] first Puisne judge*<sup>90</sup>

O'Connell St

Sep. 13 1847

My dear Sir, - I on Saturday last received the printed "Case of Mr. W.H. Barber," and as I hear you have interested yourself about the welfare of Mr. Barber, I trouble you with this letter and enclosure.

As I am not aware of the exact evidence on his trial, I can form no opinion about the propriety of the verdict delivered against Mr. Barber. I assume that the verdict was not unwarranted by the evidence before the Court. But on perusal and consideration of the printed case I have formed my own opinion that Mr. Barber was innocent of the crime imputed to him. The "memorial" is, I think much too minute and circumstantial and is too consistent in all its statements to be reasonably suspected of falsehood and fabrication; it is moreover well fortified by the accompanying statements and confessions. I therefore request you will hand to Mr. Barber the enclosed addition to the contribution which I before made on the strength of the "Report of the Sydney Law Society."

I believe that Mr. Barber was made a cat's-paw by Fletcher. This much let me in candour say however - I hope that the afflicting tale of Mr. Barber will impart this warning to all who read it, *that no man, however honest, is safe in transacting a business for a man who pursues even his legitimate object, by information improperly obtained.* Mr. Barber, I doubt not, thought that Fletcher was helping persons *to their own* but a prudent man might have ~~expected~~ **reflected** that Fletcher could hardly have obtained his information but from some officer of the bank, who ought not to have afforded it to him, and that a man who will profit by the dishonour of another is not a good client for a respectable solicitor.

The observation I have made is, I admit, much more likely to occur to the mind of one situated as I now am, and *after* consequences have ensued than to a person in the position in which Mr. Barber was when he was employed by Fletcher.

I earnestly hope that Her Majesty may be advised to grant a full pardon to Mr. Barber.

Believe me ever my dear Sir,

Yours, very faithfully,

J. N. DICKINSON.

George Allen, Esq. M.L.C., etc.

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<sup>90</sup> HO103. Text in red was either amended or added at some stage.

## Appendix 43 Letter from Sir Alfred Stephen, Chief Justice, September 1847

LETTER FROM HIS HONOUR SIR ALFRED STEPHEN,<sup>91</sup>

*Chief Justice of New South Wales.*

*Supreme Court, Sydney.*

SIR,- My attention has been called to your case by my friend Mr. Charles Cowper, the member of Council for Cumberland, with a view to my accession to the subscription list, set on foot in this city, to procure funds for your voyage to Europe - and to enable you there to prosecute your claim to a free pardon, and the restoration of your former character, and of yourself to society.

It is obvious that I ~~cannot~~ **could** not with propriety give my name to such a subscription without inquiry and examination; and I have felt that I could not ~~professionally~~ **properly** express a decided opinion of your innocence, without ampler materials than are in this colony accessible to me. But, upon the whole, I arrive at two conclusions, which induce me to comply with Mr. Cowper's request, and to write to you this letter - which you are at liberty to make use of in *any* way that you may think proper. First, I am of opinion that the case, as it now stands, would secure your acquittal at the hands of any jury. Secondly, I think that it is more than a bare case of reasonable, or grave *doubt*, but that, notwithstanding the verdict of guilty, you have established a strong *primâ facie* case of *innocence*.

With such impressions, I have no difficulty in adding my mite to your subscription list; that you may have the means nearer the spot where the evidence of your guilt exists, if you really were guilty, of effecting the same - or a still more decided result in your favour, in the minds of those in whose hands your fate rests. And I persuade myself, and do very sincerely trust, that you will fully succeed.

I ought to add, that the conclusions which I have expressed are arrived at from the facts and statements contained in your pamphlet. But I will confess that, without an examination of them, I should, as an *individual*, have been content to rest on the strongly expressed opinions of the Reverend Mr. Naylor, and of the Sydney Law Society. I have known Mr. Naylor intimately, many years. He has had great experience in these colonies, and no small acquaintance with the history of criminals, and of crime. His opinion on your case is, therefore, entitled to much weight. The same may be said of the conclusion arrived at by the Sydney Law Society. I have a personal knowledge of its leading members. They are solicitors of high character; of extensive practice and experience; and without a motive to pronounce favourably on your case, except such as might and ought to influence benevolent and upright men.

I am, Sir, your obedient servant,

ALFRED STEPHEN.

MR. W. H. BARBER,

*September 16th, 1847.*

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<sup>91</sup> HO103. Text in red was either amended or added at some stage.

## Appendix 43A Memorial (by letter) to Sir George Grey, August 1848

### Memorial of August 1848<sup>92</sup>

To The Right Honorable Sir George Grey Baronet, Her Majestys Principal Secretary of State for the Home Department.

Sir,

I beg leave very respectfully to express my sincere gratitude for your having, upon the intercession of the Reverend T. Beagly [sic] Naylor, so far investigated the circumstances of my case as to induce you to recommend Her Most Gracious Majesty to grant me a conditional pardon:- a recommendation which I just you will feel abundantly justified in extending when you have considered the additional proofs of my innocence which I have now the honor to submit.

Having in my memorial from Norfolk Island in 1845 entered into a detailed explanation of the part I had taken in the business which led to my conviction,- and in which details I have no occasion to make the slightest correction, I will not repeat the narrative: but in the accompanying pamphlet marked C. will be found a literal copy of it with an analytical index to its contents.

The partial liberty for which I am indebted to you has enabled me to get my case thoroughly enquired into by the highest legal authorities in Van Diemen's Land, in New South Wales and at Madras. Their Lordships the Judges, the Crown officers, the Counsel and the Solicitors of all those places have after a most minute investigation testified their conviction of my innocence and therefore supplied me with the means of reaching this capital in order that I may the more effectually perfect my case for your consideration. I have also been enabled to collect further and important documentary evidence to which I was denied access during my closer captivity.

In order, Sir, that you may be enabled to take a complete view of my case it may be proper that I recapitulate the steps which I have taken to bring the facts which have transpired since my conviction to the attention of Her Majesty's Government.

You are aware, Sir, that the charge against me arose out of the discharge of my duty as a solicitor, and was that of uttering a will "knowing it to be a forgery". It never was pretended that there was [HO247] any positive evidence to prove such guilty knowledge - but there were circumstances which unexplained raised such a suspicion as led to my conviction. To rebut those circumstances and to bring the whole truth fully before the court was absolutely impossible except by a searching examination of Fletcher, Sanders, his wife and her sister Mrs. Dorey the parties by whom the frauds were concocted and consummated and amongst whom the plunder was, as is shown by all their confessions, divided. In order that these persons might be examined I applied prior to the commencement of the trial, to be tried separately: an application supported by the affidavit of my solicitor declaring his conviction of my innocence and that justice could not be done me without a separate trial. Those however entrusted with the prosecution refused to consent. I will not presume to express my opinion of the true reason for such refusal but the effect most undoubtedly was to shut out the only means by which the question before the Court namely whether I was the accomplice of the guilty parties or their deceived and unwitting professional instrument, could be justly determined. Immediately after my conviction I applied by letter to the Governor of Newgate expressing my anxious desire that the four other prisoners, Fletcher, Sanders, his wife and Mrs.

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<sup>92</sup> HO246-251. Although the letter itself is not dated, the first page of the appendices is marked, 'Paris 24<sup>th</sup> August 1848.'



Dorey, who had been kept strictly separated from me (and I rejoice that they were so) ever since their apprehension, might be separately and officially examined touching my supposed complicity, but I was informed that this could not be sanctioned. After my arrival at Millbank I addressed a petition to Sir James Graham with a detailed explanation of the circumstances upon the force of which I had been declared guilty and imploring that I might not be sent out of the country until the means of clearing up a doubt, the existence of which was not denied, had been exhausted, and repeating my entreating that Fletcher and his Confederates should be investigated and the truth of my narrative might thereby be tested. I also entreated that I might be permitted to submit my books and papers to some proper person to be deputed by the Secretary of State to whom I might explain not only the circumstances which had been adduced against me at the trial but any other that might have been privately urged upon the Government to my prejudice. I advert to this because it has been suggested to me as probable that the case previously submitted had failed in producing the complete [HO248] result which had been anxiously hoped for in consequence of exparte representations, the effect of which, if I had the fair opportunity of meeting them, would be entirely removed. To this appeal I received no answer but was removed to Woolwich and placed on board the “Agincourt”. Here I met Joshua Fletcher the author of the frauds, and who it appears from the statement of his confederate William Saunders at Hobart town had been plundering the Bank of England, or rather the British Treasury, by similar means for ‘upwards of fifteen years,’ ‘ten years before he introduced himself to me at my office [sic].’ Tho’ daily and hourly crossing Fletchers path, in that most miserable of dungeons the convict ship, I never spoke to him but my case was a frequent theme of discourse between himself and other educated prisoners, to one of whom ‘William M’Callum’ he dictated a full confession of my entire innocence - which was afterwards declared before and attested by the Surgeon Superintendent - who after reading it attentively said to Fletcher<sup>93</sup>

“Is this true?”

“Yes, Sir, he replied “It is perfectly true”

‘why then’ said the Surgeon ‘did’nt you declare this before?’

Fletcher answered ‘I had no opportunity being jointly indicted with Barber’.

The true motive of this tardy and act of justice, on the part of Fletcher, it might be difficult to determine for he must have been fully aware that it could not possibly benefit himself, and assuredly it was not from any conciliatory behaviour on my part for from the moment of his betrayal of his own iniquitous conduct on his first examination at the Mansion House (when I forced him into the witness box) to my finally leaving him in Tasmans Peninsula, on the receipt of my conditional pardon, I never for an instant concealed or hesitated to express my abhorrence of him - a fact of which you will I think, Sir, be amply satisfied upon perusing the accompanying certificates.

On the day after the Agincourt sailed, namely the 9th July 1844, Saunders [sic], the husband of the fictitious Emma slack, made, on board the ‘Lord Auckland’ for Van Diemen’s Land, a full written confession of the guilt of himself and wife and “reiterated” his declaration of my innocence which he had made to his medical attendant Dr. McMurdo upon his arrival at the Compter from Edinburgh. His sister in law Mrs. Dorey made a similar declaration to the same gentleman when she was first brought to the Compter, before she became the instrument of the prosecution. Mrs.

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<sup>93</sup> The following exchange has been reformatted and the punctuation, or lack of it, is William’s.

Saunders [sic] after her trial at Newgate also declared her belief that I was perfectly innocent of all guilty knowledge of their proceedings.

[HO249] Upon Saunders's arrival in Van Diemen's Land he underwent the before mentioned official examination for the convict register and he then repeated that I "knew nothing about the fraud".

Shortly after the arrival of Fletcher and myself at Norfolk Island the Reverend T.B. Naylor and Mr. Commissary Smith were induced by the strongly expressed opinions of Mr. Fuller the Surgeon Superintendent of the Agincourt and of the Reverend Mr. Ison who came as chaplain in that vessel to make a very minute inquiry into the matter and to interrogate Fletcher and myself - separately and confronted - the result of several weeks labor was the report annexed to my memorial from Norfolk Island in March 1845. The Revd. T. Rogers who succeeded Mr. Naylor as chaplain at Norfolk Island also took great pains in questioning Fletcher and in collecting the particulars of his conversations with his fellow prisoners, the result of which will be seen in the accompanying certificate of Mr. Rogers.

Fielding Browne Esq. the Judge of Assizes at Norfolk Island made two judicial visits to it during my confinement there, upon both which occasions he devoted much time to the subject as will be seen by his Certificate.

The Civil Commandant, Mr. Price, who succeeded major Childs upon that gentleman's suspension, also examined Fletcher and his certificate and his certificate [sic] is also herewith submitted.

Upon the arrival of prisoners from Norfolk Island by order of Her Majesty's present Secretary of State for the colonies, founded upon the exposure by Mr. Naylor of the horrible system in operation there, Fletcher and myself with 300 other prisoners were placed under the charge of Doctor Browning R.N. Surgeon Superintendent of the "Pestonjee Bomanjee" for transport from the Island to Tasmans Peninsula. In the course of the voyage the doctor took the opportunity of interrogating Fletcher and myself and the facts thus elicited, as well as the animus with which they were revealed by Fletcher, will be shown by the Doctors certificate and Report.

Upon my arrival at Hobart Town I obtained the accompanying official copy of Sanders's examination there.

Immediately on my reaching New South Wales I prevailed upon the members of the Sydney Law Society to investigate my case and as you will perceive, Sir, by their report they devoted ten days to a minute examination of the evidence adduced at the trial - of my Memorial in explanation and of the confessions and other evidence, and the result was an "unanimous persuasion of my entire innocence". [HO250]

Subsequently their Honors Sir Alfred Stephen the Chief Justice of New South Wales and Mr. Justice Dickenson individually made sifting inquiries into the circumstances, which resulted in an unqualified concurrence in the opinion of the Law Society, as will be seen by their Honors letters. (paper D).

Upon my arrival at Madras I laid my case before members of the legal profession at that [? Presidency], and their Lordships the Judges, the law officers of the Crown, the Barristers and Solicitors there unanimously arrived at the same opinion as the legal authorities at Sydney. I have the honor to submit the subscription list which resulted from the investigation at Madras together with the letter of Mr. Norton Barrister at law and Clerk of the Crown who superintended the

subscription made by the profession. I also submit the subscription list of Col. Browne, the military secretary to the Government, at Madras.

In submitting the documents set forth in the accompanying pamphlet I am much tempted to invite your attention to particular facts certified as well [as?] arguments advanced, and which had been considered by eminent legal minds of unanswerable force: but as much of the evidence obtained since the conditional pardon was signed could not be appreciated without a re-perusal of the former memorial, and of the documents which accompanied it I trust you will be pleased to consider my whole case as set forth in the pamphlet:- I confidently trust that you will recognise in all the documents and statements that perfect consistency which Mr. Justice Dickenson observes pervades my memorial from Norfolk Island (written on the bed of sickness in hospital) and that every adverse idea or unfavorable presumption that ever has been or that could be rationally entertained is now satisfactorily met. If however there should yet appear to your mind any unanswered difficulty I entreat you, Sir, to afford me the opportunity of meeting it – either through His Excellency The Marquis of Normanby (who has been so good as to undertake the transmission of my papers) or through such other channel as you may think fit.

It may not be impertinent, Sir, to observe that I have not attempted to back this appeal by any array of the friends of my cause in England. I was indeed under the necessity of publishing my papers in Sydney and Madras to procure that assistance which would most undoubtedly have being withheld had I not thoroughly satisfied the highest legal authorities there of my perfect innocence. I think I am warranted in supposing that the same case which obtained for me the unanimous support of the judges; [HO251] of the entire legal profession - and of society at large, without as far as I know one dissentient voice, in Van Diemen's Land, New South Wales and Madras will, when the proper time arrives, obtain for me the sympathy and aid of my profession, and of those whose renewed confidence I shall then have to seek:- meanwhile I confine myself to the only legitimate course which the Constitution of my country provides - relying on the intrinsic merits of my cause and on your independent and unbiased judgment. If that judgment, as I confidently hope it will should restore me to my country, I shall have means which, in great part, are inaccessible whilst excluded from it, of abundantly justifying every part of my conduct in this, to me, most melancholy transaction - and of winning back that place in Society which I have never forfeited but from which by an almost unparalleled concurrence of unfortunate circumstances I was cruelly driven. I may remind you, Sir, that it [sic] indisputably proved at my trial on the oaths of the Gentleman to whom I served a clerkship of seventeen years – by Barristers – solicitors – merchants and other gentlemen that both as a member of my profession and of Society I have during all my life enjoyed an unblemished reputation:- and a perusal of the accompanying certificates will I think satisfy you that I have passed through the terrible ordeal of convict degradation and misery, [? embittered] by the most exasperating and revolting cruelty in Norfolk Island, without forfeiting the character I had previously the happiness to enjoy.

In conclusion, Sir, permit me, very humbly, but most earnestly, to implore that you will not delay your attention to the case I am now enabled to lay before you. Think I beseech you how much of the prime of my life has been already consumed – of the tortures I have suffered during an exile of four years from my native land - that almost every thing that is dear to me on earth is there - and that I can never enjoy one moment of real happiness until the imputation of being a “Criminal”! is entirely removed.

I have the honor to be,

with profound respect

Sir

Your most obedient

and very humble servant

William Henry Barber.

I shall be glad to receive, if such should be your pleasure Sir, the answer to this memorial through His Excellency the Marquis of Normanby.

W.H.B.

## Appendix 44 Letter from Barber to Marquess of Normanby

[Normanby was British Ambassador to Paris]<sup>94</sup>

Cité Odier, No. 7 (Rue de Ponthieu)

25 August 1848

My Lord,

I was prevented by ill health from getting the accompanying papers ready quite within a week as your Lordship was so good as to suggest, and now the Memorial is not so perspicuously written as I could have wished - but I rely upon the provided documents which speak for themselves.

I omitted to ask your Excellency whether Sir George Grey had been pleased to mention any circumstance which he deemed necessary to be met or whether such had occurred to your Lordship. If any such point has been [? adverted] to or has occurred to your Excellency I should be truly grateful for having my attention directed to it prior to submitting my Memorial. Such a course might save much time and anxiety.

If it were possible for your Excellency to read my Memorial and to suggest any useful amendments it would greatly increase my obligations.

Your Lordship was so good as to say the provided case had made a considerable impression upon you. May I indulge the hope that your Excellency will be pleased in transmitting my papers (a kindness which I am sure your Excellency will not delay) to give expression to that feeling.

I do trust that those facts and explanations which have thoroughly satisfied the many eminent persons who have considered them will satisfy Sir George Grey for whose personal and political character I entertain the most sincere respect. An adverse decision would plunge me afresh in the deepest misery, and drive me to a harassing struggle in [sic] in which the rest of my life might be consumed.

I have the honor to be,

My Lord,

With the most grateful respect,

Your Lordships most obedient

And very humble Servant

W Henry Barber

To His Excellency

The Marquis [sic] of Normanby

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<sup>94</sup> HO122.

## Appendix 45 Instructions of William Sanders to his Solicitor

[Extract as provided by Barber]<sup>95</sup>

From Select Committee Evidence

318. Will you call the attention of the Committee to anything further you think material in those documents? - There is an extract from Sanders' instructions to his solicitor in the Appendix to Book 2, page 2.

“It must have been about June 1842, or perhaps a little later in that year, I received a letter from Fletcher, informing me that he had received intelligence from his friend at the Bank of England of something very good, and requesting me to see him as early as possible. Accordingly I proceeded to London and went to his house, where he informed me his friend had given him the particulars of a case which had not gone to the Commissioners: that is, the 10 years had not quite expired, which required it to be from the last dividend, before it was invested with the Commissioners for the National Debt; that it stood in the name of Anne Slack, Smith-street, Chelsea; that he, Fletcher, had made a great many inquiries all about that neighbourhood, and could find no trace whatever of any such person; that he had seen an old postman who had delivered letters there a number of years, and had given him money to gain all the information he could, but had obtained none whatever; as the sum was considerable, he thought I might get my wife to take the case in hand; I said I would endeavour to prevail on her to do so. A short time after this Fletcher came to Bristol; he said he came to make inquiries about the case of Slack, and, as I had informed him at our interview at his house, there were persons of the name in Bath, he thought to try there. I proceeded there, but could not find one that answered the description given by Fletcher. On my return, Fletcher informed me that his information was to the following effect: Anne Slack appears to have had a sister; at this time it was intended, if the right owner could be discovered, that information should be given to the owner upon receipt of a bonus, to be divided between me and Fletcher. Whilst these inquiries were in progress information reached Fletcher from his friend at the Bank that the stock had been transferred to the Commissioners for the Reduction of the National Debt; and after a long consultation, it was determined to try to obtain the money from the Commissioners by means of personation. Fletcher told me that it appeared Miss Anne Slack, in whose name the stock had stood, was one of two sisters who had stock invested in the same account; that there had been a power of attorney granted by the two sisters to a Mr. Hulme, whom Fletcher had ascertained was a partner, but he turns out to have been a clerk in the house of Jones, Loyd and Co.; that the sister had married a Captain Joseph Foscett, and that soon after his marriage had sold out; that he had received the dividends to 1832, about which period he appears to have died. We therefore procured the army list, and found the name of Captain Foscett; but there being no address given, he being on half-pay, Fletcher said he had a person in the Army Pay Office from whom he could perhaps obtain Foscett's address. Fletcher returned to town, and some short time afterwards writes to me, his friend at Somerset House gave him the name of Captain Foscett's agent, from whom he had been enabled to find that he resided at King's Langley, which is on the line of the Birmingham Railway. I should have previously mentioned that Fletcher had obtained with [sic] other information of his friend at the Bank, on a small slip

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<sup>95</sup> House of Commons (1858) *Report from the Select Committee on the Petition of William Henry Barber*, 22.

of paper, a fac simile of the handwriting of Anne Slack, taken from the power of attorney granted by her and her sister, to Mr. Hulme. Fletcher and myself went to Langley station; and there on inquiry, found that Captain Foskett's residence was not very far off. We got a railway policeman to go into the village; by giving him a shilling to spend, he might be enabled to meet with some person to give him the information required, viz. if Captain Foskett's wife had a sister, and if so, her name and residence. Fletcher and I took tea prepared for us at the railway station. Our messenger soon returned with the intelligence that he had met with the coachman of Captain Foskett; that he had taken him to a public house, and had partaken of some beer with him, and from whom he learned that Mrs. Foskett had a sister, who was living in the family, and was generally known to them as Miss Nancy. With this information I returned with Fletcher to town. We had no doubt but this lady was the person we had been so long in pursuit of; the next difficulty now was, how to get an introduction so as to be able to turn our knowledge of what the lady was entitled to to the best account (for now that we had made the discovery that she was living, all means of proceeding by personation were given up). At length it was settled that Fletcher should apply through Barber for that purpose, and with this understanding I left London. Fletcher came again to Bristol, and told me the result of Barber's inquiries, and also that it was Barber's opinion that it did not relate to her, but to some other Slack. Fletcher said there could now be no obstacle in the way of my wife taking the case in hand. Fletcher then produced some paper without water-mark, and I wrote a will of Anne Slack from a copy produced by Fletcher; and before Fletcher left Bristol, which he did in about a week after, he took an advertisement to Verriers, the newsvender, in High Street, to be inserted in the Bath and Cheltenham Gazette, a copy of which paper I forwarded to Fletcher, by his desire, in London, and, as agreed on, my wife took lodgings in Westgate-buildings, Bath, where she answered the advertisement by letter, from a copy given to her by Fletcher as Jane Slack. Barber returned an answer, that he should be glad to conduct her business, as it was probable that he could be of assistance to her. My wife proceeded to London, saying she was about to pay a visit to her sister. On Mrs. Sanders's arrival in town, she took up her residence with her sister, Fletcher of course calling to see her. Fletcher went to the General Register Office in Somerset House, and discovered that there had been a mistake in the register which I caused to be made in Bath, for the name appeared to have been Stack instead of Slack. Fletcher stated to me that he saw the Registrar-general, who informed him of the error, and who advised its correction, for which purpose Mrs. Dorey and my wife went to Bath, had an interview with the registrar and Superintendent, who would not alter the register unless they saw the person who had made the entry. I then received a letter from Fletcher, stating the error, and requesting to see me in town, where I immediately proceeded; met Fletcher by appointment on Waterloo Bridge, and we talked the subject over, he wishing me to go to Bath and have it put right. I refused to do so, and said I would rather abandon all further proceedings. It was at length arranged that we should take fresh proceedings by a fresh register, which was settled should be either in Chelsea or Pimlico. Fletcher and myself went to Pimlico, and after some research fixed on the place, and I was to make the registry, which I did, after calling several times at the Registrar's, he being from home; it was nearly 10 o'clock at night before I could get, as I was anxious to return to Bristol, and wished it to be done that night. Fletcher afterwards called at the Registrar's, and procured a certificate of the registry of Anne Slack's death as registered by me. Mrs. Dorey took lodgings for my wife. She disguised herself with a light coloured ringlet front, covering the greater part of her face, a close bonnet, spectacles and

a veil. A disguise which she always wore whenever she went to Barber's office, Doctors' Commons, or the Bank. The fictitious will which was first made having devised the stock to Jane Slack, of Bath, it now became necessary that a fresh will should be prepared, and it was intended to apply to me for that purpose; but after the discovery of the error in the registry at Bath and the abandonment of proceedings there, I wrote a letter to Barber and Bircham on the part of Jane Slack, stating that Jane Slack did not think the Anne Slack, as advertised, had reference to her, and that I was instructed to say that she had consulted her solicitor, and therefore declined calling on them, or taking any further proceedings in the matter, to which letter I attached a feigned name. In consequence of that letter Fletcher would not allow me to write the new fictitious will, fearing that Barber should discover a similarity in the writing; he therefore wished my wife get Mrs. Dorey to write the will, which she did. Mrs. Dorey frequently called to see her at her lodgings, generally in the evening; Fletcher also frequently calling, but no other person visited her."

"My wife returned to her lodgings in Francis-street, Tottenham-court Road, after getting the money at the Bank, where she procured some refreshment for Fletcher, he being, he said, quite fatigued from long anxiety and fasting throughout the day: after he finished his repast, my wife divided the money in the same manner as it was divided in Hunt's case. In the course of October or November last, my wife received two letters from Fletcher, giving me to understand that inquiries were going on in the Bank about this affair; this information he procured from his friend, Mr. Christmas, the clerk in the Bank of England. The first time I saw any account of what took place in the Mansion House, was a very short paragraph in the Bristol Mercury. I read it to my wife; she became very much affected, and at length became so ill that I feared her life to be in great danger. After the case of Mary Hunt came out before the magistrates, Mr. and Mrs. Dorey visited me in Bristol, and persuaded me to go forward and make a full confession of all I knew."

From the following memorandum in the handwriting of Mr. Harmer, it is probable that this statement was originally prepared by Sanders as a narrative of the facts for the prosecution:

"Sanders applied to Mr. Harmer, his solicitor, who proposed to Mr. Freshfield to supply him with material evidence, if he would admit the informant as witness for the Crown, or promised not to prosecute him. This offer was rejected, and it was thought advisable that Sanders and his wife should keep out of the way until the other parties had been tried, and they managed to elude the officers for two months but were eventually apprehended."

In page 6 there is the following note, as to the reference to Hunt's case:-

"The original statement in the handwriting of Sanders, giving the history of the concoction of Hunt's fraud, has not yet been found, but Mr. Barber's committee are in possession of the original briefs in Hunt's case, delivered to Sanders's counsel, in which that statement was embodied. The following is an extract, as to the division of the proceeds of the fraud in Hunt's case:

"The amount appearing as Barber's charges did not exceed £25, and Sanders thinks that included the proctor's charges; then Sanders paid the broker, and proceeded to get the notes changed, which he had received from the broker, into gold; and then he took a cab, and went to Miss Richards's lodgings in Dean-street, Soho, where, in the course of the evening, Fletcher came, accompanied by his daughter. After tea, Fletcher and Sanders adjourned into another room, where after



deducting for charges each party had incurred, Fletcher took £5 per cent. on the gross amount for his friend in the Bank of England, and Sanders took £20, which he afterwards gave to Miss Hawks for her trouble, and all other claims being taken, Fletcher and Sanders equally divided the remaining into two portions, Fletcher taking one, and Sanders the other; and they divided about £1200 between them.”

[ends]

## Appendix 46 Analysis of Barber's positions on Christmas correcting the Bank 'error'

Date	Barber's claim	Source
3 Apr 1843	<p>'Fletcher had informed me that there were the names of two Misses Slack in those books, and both were marked "dead"- Miss Slack, of Abbot's Langley, as well as Anne Slack, for whose pretended niece, Emma Slack, I was acting.- [The prisoner here read two extracts from his own diary, and from that of his partner, Mr. Bircham, to show about the 3d of April, 1843, Fletcher had stated that both the Misses Slack were marked "dead" at the Bank. An entry to this effect appeared in both the diaries.]'</p> <p>No mention of any correcting of the error.</p>	Barber's speech to Court of 22 April 1844. <i>The Times</i> (1844) 'The Will Forgeries' 23 April.
3 Apr 1843	<p>'he called and told my partner, and afterwards myself (as appears from our respective diaries), that the Bank had in error entered the two Miss Slacks "deceased" in their books—i.e., Miss Slack, of Abbott's Langley, who was the owner of the £6,000 stock, and the old lady of Pimlico, Emma Slack's aunt, so that when the former went to receive her dividends, she would find herself so entered, and some difficulty or confusion might arise. I observed to him, as our knowledge of this error is only through you, we cannot set them right. "Oh, no," said he, "<b>my friend will see to that ...</b>"'</p>	<p>BB (1853, 9<sup>th</sup> ed.) 74-75 (55-56)</p> <p>Also in 1847 print of BB Pamphlet, p10 at HO277; and 1849 print, p41.</p>
3 April 1843	<p>'Whilst the business was in progress, Fletcher mentioned that the bank had in error treated the executrix as the party entitled to <i>both the £6000 and the £3500</i> stock, Although no claim whatever was made for the former, and having made both amounts 'dead,' as it is technically called, there might be some confusion when Miss Slack, of Abbott's Langley, next applied to receive her dividends of the £6000.'</p> <p>No mention of any correcting of the error.</p>	Letter to the Editor, <i>Hobart Courier</i> published 26 May 1847, Appendix #.
17 Nov 1843	<p>'After Mr. Freshfield's visit (the prisoner proceeded) I wrote to Fletcher, informing him that I had received a communication from the Bank, and requesting to see him. He called upon me, on the following Friday, and he said, "Don't trouble yourself about it. I know there is some confusion at the Bank; but my friend knows all about it, and he will set the matter right." I replied, "I remember you told me both the Misses Slack were marked 'dead';" and said, "Yes, but it will now be put right." On the 22d</p>	Barber's speech to Court of 22 April 1844. <i>The Times</i> (1844) 'The Will Forgeries' 23 April.

	<p>of November, 1843, Fletcher wrote me the following letter:-</p> <p>“Dear Sir,- In consequence of having some of my houses without tenants, and also being obliged to do expensive repairs to them, I find my cash account to stand quite short. Under these circumstances I should be much obliged if you would have the goodness to pay me the amount of your note of hand, which I find becomes due on or about the 14th of December next (one year longer than the time for which it was drawn). I do not want the money until then, but I thought it prudent to apprise you in time.</p> <p>“I have not heard anything more of the Bank business and I suppose that you have not.”</p>	
17 Nov 1843	<p>‘He came on Friday, when I acquainted him with the particulars of Mr. Freshfield's visit. He said, “<b>You ought not to be surprised at that, after my having apprised you of the mistake which had been made in the Bank books—the inquiry is precisely what I expected—but the error will be put right, and you will hear no more of it.</b>” I said I had no doubt that it was so, but it would be satisfactory to know that the mistake had been found out and corrected, and <b>I would ask Mr. Freshfield if it had been done.</b> He, however, dissuaded me from this, observing, “It will only afford him another opportunity of probing you, to learn, if possible, from whom the information was originally obtained about the stock; but I know all that is doing at the Bank as well as Mr. Freshfield does, and that the error <b>will be soon corrected</b>—depend upon it, you will hear no more of the matter.’</p>	BB (1853, 9 <sup>th</sup> ed.) 76 (57). (The original, at HO213, is slightly different, the main change in the quoted version being the addition of ‘depend upon it’.
17 Nov 1843	<p>‘I told him<sup>96</sup> I thought there must be some mistake. I believed most firmly that the enquiry of Mr. Freshfield was founded in the error which Fletcher had previously said had been committed in the Books by making the <u>two Anne Slacks dead</u> and I considered I ought not to expose him to any annoyance without first calling upon him for an explanation.</p> <p>I sent for him accordingly when he reminded me of what he had previously stated with regard to the two Slacks adding ‘I know all that's passing at the Bank. They will set themselves right and you will hear no more of it.’ I said at all events I will write to Mr. Freshfield to ascertain distinctly whether a mistake has really been made. He said</p>	Petition of 21 May 1844, at HO26, Appendix #.

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<sup>96</sup> James Freshfield.

	<p>you had better not do that as you will again be pressed for my name and which I don't wish known at the Bank and perhaps after all the object is to trace out the party who gave me the information. <b>He called a day or two afterwards and represented he had received a letter from his friend stating that the error had been corrected.</b></p>	
17 Nov 1843	<p>'I wrote for Fletcher, who, two days after, called at the office, when I told him of Mr. Freshfield's visit, and discussed with him the possibility of our having arrived at an erroneous conclusion in rejecting the identity of Captain Foskett's sister-in-law, and of his having been imposed upon by the subsequent claimant. Fletcher, however, mentioned many circumstances in support of the <i>bona fide</i> nature of Miss Emma Slack's title, and particularly reminded me of the previous intimation of the error in the bank books, upon which point he promised to obtain further and [precise] information. <b>A few days afterwards, he called, and assured me that the error had been corrected,</b> and that I should hear no more of it.'</p>	<p>Letter to the Editor, <i>Hobart Courier</i> published 26 May 1847, Appendix #.</p>
22 Nov 1843	<p>[As quoted above] Fletcher wrote, 'I have not heard anything more of the Bank business and I suppose that you have not.'</p>	<p>Barber's speech to Court of 22 April 1844. <i>The Times</i> (1844) 'The Will Forgeries' 23 April.</p>

## Appendix 47 Letter from Barber to Sir George Grey

Cité Odier, No. 7<sup>97</sup>

(Rue de Ponthieu) Paris

27<sup>th</sup> October 1848

To The Right Honorable

Sir George Grey, Baronet

Sir,

I trust you will pardon my troubling you with this letter.

I have just learn't [sic] that the gentlemen who had sought the honor of an interview with you on my case have in deference to the feeling indicated by your letter of the 24<sup>th</sup> instant declined to press the application for an audience any further.

Whilst I am sensible of the propriety of the course adopted I may be permitted to express my regret that such an audience was not had because the deputation was composed of gentlemen who would have been enabled to afford explanation of any query to which the perusal of my papers might have given rise. If however there should yet appear any unanswered difficulty I sincerely trust I should be allowed an opportunity of answering it.

The deputation was to have handed in the officially certified copies of the documents forwarded in support of my memorial, and it may be proper therefore now to mention that they are in the hands of Mr Stevenson.

As I do not find that any mention has been made in your letters of the papers transmitted by me through His Excellency the Marquis of Normanby on the 7<sup>th</sup> of September and as His Excellency has received no acknowledgement of their receipt, which however he says is not usual with such papers, so sent, it may be proper to state that they were four in number - and marked respectively A.B.C. and D.

A – My Memorial

B. Descriptive list of documents in support of memorial.

C. pamphlet containing printed copies of most of such documents.

D. A single sheet containing printed copies of the remainder.

If by any unfortunate oversight these papers have miscarried I am sure, Sir, you will be good enough to direct that I may be informed thereof without delay.

I earnestly trust that the case now submitted will be perfectly satisfactory to your mind but I may be pardoned for pointing out that I lie under great difficulty whilst excluded from England where all the Books and papers connected with my late business are; had I access to which the proofs of my innocence might be greatly accumulated.

When apprehended my office diary was seized and I was never permitted to inspect it until after my conviction. I did indeed with great difficulty obtain copies of such entries as my memory

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<sup>97</sup> HO126-131.

(greatly impaired by my agonising position) enabled me to specify - but I was denied the opportunity of refreshing my recollection of the history of the transaction and of the circumstances, and events connected with it by a perusal of the entire entries.

I have reason to believe also that if I were in England I could procure declarations from the two juries by whom I was tried, the one that acquitted and that which convicted me, which would have their measures of weight. One of the acquitting jury visited me alongside the ship at Woolwich declaring that he and the rest of that jury were perfectly satisfied of my innocence and that their unhesitating verdict was the result of unanimous conviction [sic] he added that he and several other members of that jury attended the court during the whole of the second trial and that they would certainly have acquitted me in that case also. Both cases as you are aware Sir, involved precisely the same question and were introduced by the same person my perfidious though opulent and ostensibly respectable client - Joshua Fletcher.

But I do not impugn the conduct either of the Judge or Jury who were doubtless actuated by the finest motives, but owing to my being denied bail, although there was never more than a case of unexplained suspicion against me, and imprisoned for four months in a wretched cell in the depths of a severe winter, and finally by the denial of a separate trial I was deprived of the means of bringing the real facts fully before the court. How these have come to light and forced themselves forward under far less favorable circumstances than a separate trial would have afforded you will see, Sir, by the printed statement of my case in the pamphlet accompanying my memorial.

I am ignorant, Sir, whether you have been made acquainted with the state of my health and my position in Paris. I am quite aware that such considerations cannot add a tittle to the merits of my case, but they will not I trust be disregarded as reasons against delay.

I have now been five months in Paris having waited the close of the session for your greater leisure. I have travelled from Australia to Europe by funds raised by the principal inhabitants of New South Wales and Madras, (see Paper D) who have hope that the case which has so fully satisfied them will also satisfy you. Those funds were however entirely exhausted by the heavy expenses of my unavoidably circuitous route through China and India. I have endeavoured by every means to obtain employment, but an Englishman whatever his qualifications or however unimpeached his reputation has now very little chance of remunerative occupation in France, and the prospect of it for one suffering under the crushing stigma that I at present do is utterly hopeless:- and indeed I am so reduced now by illness and a want of the necessaries of life that I am disabled from any active employment even if it could be obtained. My constitution was ruined by my condition and treatment in Norfolk island and the misery of prolonged exile and destitution combined have produced their natural effect.

For four years I have struggled, opposed to all sorts of obstructions and suffering the bitterest agonies, to bring the real facts of my case before the Secretary of State and though the prospects of happiness and honor which once were mine are forever gone I yet hope to live to hear my innocence acknowledged by the Government of my country and to be restored at least in reputation to that society whose laws I have never in the slightest degree offended and to be a useful member of which had ever been the aim of my life.

With the most grateful feelings for your promise that my case shall receive careful and attentive consideration and imploring that this may not be delayed

I have the honor to be,

with the utmost respect

Sir,

your most obedient

The Right Honorable

and most humble servant

Sir George Grey, Baronet

W. Henry Barber.

## Appendix 48 Draft and final letter from Sir George Grey, decision on free pardon

### Draft<sup>98</sup>

Whitehall,

30th October, 1848.

Sir,

I am directed by Secretary Sir George Grey to acknowledge the receipt of the several documents which you have transmitted to him on behalf of Mr. W. H. Barber, who was convicted at the Central Criminal Court, in April, 1844, of forgery, and sentenced to be transported for life.

Sir George Grey desires me to inform you, that these papers have received his full and anxious consideration, and that he has decided upon advising her Majesty to grant Mr. Barber a free pardon, which is herewith enclosed.

But in thus giving Mr Barber the benefit of a doubt as to the extent of guilt [assumed] by the verdict of the Jury, Sir George Grey by no means intends to question the propriety of the verdict. On the contrary he is desirous of recording his opinion, that the Jury could not properly upon the facts before them have come to any other conclusion; and that although circumstances have transpired since the trial which may now justify a different view of the case, Mr Barber's conduct in relation to the affair out of which the charge against him arose was such as to deprive him of any just ground of complaint of the position in which he has been placed, or of the punishment which he has endured.

I am

Sir

A. Stevenson, Esq., 19, Essex Street, Strand.

### Final<sup>99</sup>

Whitehall, 10th November, 1848.

SIR,—I am directed by Secretary Sir George Grey to acknowledge the receipt of the several documents which you have transmitted to him on behalf of Mr. W. H. Barber, who was convicted at the Central Criminal Court, in April, 1844, of being accessory before the fact to forgery, and sentenced to be transported for life.

Sir George Grey desires me to inform you, that these papers have received his full and anxious consideration, and that he has satisfied himself that there is sufficient ground to justify his advising her Majesty to grant Mr. Barber a free pardon, which is herewith enclosed.

But while he has arrived at this conclusion, from a consideration of all the documents in his possession, comprising very material circumstances which have transpired since the conviction, Sir George Grey feels bound to add that he sees no reason to doubt that the verdict of the jury was warranted by the facts proved at his trial; and although he now believes Mr. Barber to have

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<sup>98</sup> HO164-165.

<sup>99</sup> BB (1853, 9<sup>th</sup> ed.) 147 (128).



been free from any guilty participation in the frauds of which he was made the instrument, he thinks that greater prudence and caution on his part would have exempted him from the suspicion to which his conduct in the transactions in question naturally exposed him.—I am, Sir, your obedient servant,

G. CORNEWALL LEWIS.

A. Stevenson, Esq., 19, Essex Street, Strand.

## Appendix 49 Arguments in *Re Barber*, January to May 1850

### Re Barber 1850

#### Press Reports, including Submissions of Wilkins

28 January 1850<sup>100</sup>

1. In this case, an application had been made to the Court, in the month of January, 1849, by Mr. Serjeant Wilkins, on the part of William Henry Barber, an attorney, that he might be allowed to renew his certificate, to enable him to practise as an attorney. On that occasion Sir F. Thesiger appeared on the part of the Incorporated Law Society, and, upon hearing the counsel on both sides, and Mr. Barber's affidavit, the Court ordered that the application should be referred to one of the Masters, who should report thereon to the Court.
2. MASTER TURNER now read, at considerable length, a report which he had prepared on the matter referred to him; but, as this report was cited at considerable length in the argument of Mr. Serjeant Wilkins, it is sufficient here to state that it entered fully into all the particulars of the four forgery cases in which Mr. Barber had been implicated, and also referred to some other alleged malpractices which had been brought to the knowledge of the Law Society in consequence of Mr. Barber's application to be restored. The Master accompanied his report of the facts with such remarks and comments as appeared necessary to call the attention of the Court to the most important points.

[*Mr. Serjeant Wilkins*]

3. Mr. Serjeant Wilkins (with whom was Mr. Lush) addressed the Court, as on a motion, that Mr. Barber should be allowed to take out his annual certificate. He said that in the course of the observations which he should have to make in that important case on the part of his much-injured client - a case which was of such vast importance to the community in its consequences - he should feel himself called upon to impugn both the reasonings and statements of the learned Master who had made the report; but, in so doing, he should exhibit all possible personal respect to the learned Master, and would do no more than had been often done when the judgments and reasonings of the highest sages had been impugned.
4. Mr. Barber had not expected that he should be called upon to answer an investigation of this kind, but his object was to set his reputation right before the world, and he felt that if that were not done he would rather have continued to live as an exile in a foreign land than to return to this land to live the object of contempt and scorn. It was on the suggestion of Lord Denman, whose absence on the present occasion he (Mr. Serjeant Wilkins) as well as Mr. Barber deeply regretted and deplored, that he consented that this inquiry should take place.
5. By the pardon which Mr. Barber had received from Her Most Gracious Majesty, he was placed in the same position in which he stood in the year 1843, before his trial took place. But the effect of that pardon appeared to be but little understood by the members of the Incorporated Law Society, who, by their proceedings, had infringed upon the Royal

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<sup>100</sup> *The Times* (1850) 'Court of Queen's Bench... In re W.H. Barber, an Attorney' 29 January.

prerogative in assuming a power which did not belong to them. The effect of the Queen's pardon, accompanied by the statement that Mr. Barber was free from any guilty participation in the frauds of which he was made the instrument, was to reinstate him in the same position which he held before his conviction.

6. In fact the word "pardon" ought not to have been employed at all, for it implied that there was some guilt to be forgiven. On the contrary, he (Mr. Serjeant Wilkins) would show that there was nothing to forgive, and that the word "pardon" had been altogether misapplied to the case of Mr. Barber. The effect of a pardon was to renovate and to reinstate the person in his former position. In *Bacon's Abridgment*, tit. "Pardon," it was said "It seems agreed that a pardon of treason, or felony, even after an attainder, so far clears the party from the infamy, and all the other consequences thereof, that he may have an action against any who shall afterwards call him a [sic] traitor' or 'felon;" for the pardon makes him, as it were, a new man." The authorities cited in support of the proposition were ... [specified by Wilkins but omitted here]
7. It was formerly doubted whether a pardon did more than take away the punishment; but it was now decided that it not only removed the punishment but all the legal disabilities. That was laid down in several authorities, but the only one which he would now cite was *Hargrave's Juridical Argument* ... where it was said that if the King's pardon could not renovate the character, so that the party should become *liber et legalis homo*,<sup>101</sup> it would be so maimed and imperfect a power as not to deserve the name of pardon, for it would leave him with such stigmas and incapacities that his life would be a burden. The pardon of Mr. Barber was entitled to more than ordinary attention, for it was manifest that it had received more than ordinary consideration.
8. In the first place, he received only a conditional pardon, the condition being that he should not return to the united kingdom [sic]; but, sometime after, in consequence of further evidence being laid before him, Sir George Grey advised Her Majesty to grant Mr. Barber a free pardon, and accompanied the pardon with a statement of his belief that he was free from any guilty participation in the frauds which had been practised.
9. The learned Serjeant here read the letter alluded to, from Mr. Cornwall [sic] Lewis, dated the 10th of November 1848, and addressed to Mr. Stevenson (Mr. Barber's attorney). It contained the following passage:-

"Sir George Grey desires me to inform you that these papers have received his full and anxious consideration, and that he has satisfied himself that there is sufficient ground to justify his advising Her Majesty to grant Mr. Barber a free pardon, which is enclosed herewith.

But while he has arrived at this conclusion, from a consideration of all the documents in his possession, comprising very material circumstances which have transpired since the conviction, Sir George Grey feels bound to add that he sees no reason to doubt that the verdict of the jury was warranted by the facts proved at his trial, and although he now believes Mr. Barber to have been free from any guilty participation in the frauds of which

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<sup>101</sup> A free and lawful man.

he was made the instrument, he thinks that greater prudence and caution on his part would have exempted him from the suspicion to which his conduct in the transaction in question naturally exposed him.

I am &c

G. CORNWALL [sic] LEWIS”

10. In that letter Sir George Grey, after perusing all the documents which had been laid before him, attributed want of prudence and want of caution; [sic] to Mr. Barber; but how did those documents show want of prudence or want of caution, except, indeed, it were that sort of negligence which was usually compensated by an action for damages, but not such as would be a ground for striking an attorney off the rolls. Instead of being punished in that way, viz., by action, Mr. Barber had been subjected to every indignity which cruelty could devise to torture his mind or lacerate his body; and then he was asked to refer his application for his certificate on the ground that he had been guilty of a want of prudence and a want of caution.
11. If he had received his pardon within 12 months after his conviction he would not have had any occasion to ask for permission to renew his certificate; but now, because of the accident that that pardon had not been given within the 12 months, this resistance was made; and it was sought, in effect, to have him struck off the rolls, although the whole country, with one voice, would grant his application, except a few gentlemen who met occasionally in Chancery-lane.
12. A rule of Court of the year 1846, after reciting the statute 6 and 7 Victoria, c. 73, s 25, which enacted that if an attorney should neglect to take out his certificate within the time by law appointed for that purpose, he should not be allowed to do so without an order of the Court, or a judge, proceeded to require that a party so applying should give a term's notice of his application, in order that the judges might have the means of inquiring as to the circumstances under which the party discontinued to practise, and as to his conduct and employment during the time of such discontinuance. The rule was originally drawn up so as to meet the rule of this Court by one experienced in these matters; but the Master had exceeded his province and altered the rule, and struck out a most important part of it, viz., that which referred to Mr. Barber's conduct during his discontinuance to practise. In fact, he had quashed the rule as drawn up, and made another in its stead, which he had no right to do.
13. But he (Mr. Serjeant Wilkins) would show the Court what the conduct of Mr. Barber had been, and he would then ask, the end of his probation whether there was any one who would be willing to trust himself to such an ordeal. Mr. Barber had been tried (*gaudet tentamine virtus*<sup>102</sup>) and the result would be laid before the Court.
14. The learned Serjeant then preceded to complain that many stale complaints against Mr. Barber had been entertained by the Master, and he cited Mr. Pulling's work on the *Practice of Attorneys*, p.288, where it was said that applications to the Court against attorneys on the ground of misconduct should be made within a reasonable time, and that an application made so late as three years afterwards had been decided as too late. But in the present case, Mr. Barber's opponents had ransacked his history from his boyhood.

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<sup>102</sup> Virtue rejoices in being tested.

15. One of the charges was 14 years old, and youngest was seven years old, and in reference to a matter which took place 12 months before he left this country. No complaint whatever, with this exception, had been made against him by any single client, although he swore that he had 200, and that his bills of costs in one year amounted to £3,000 and even in that single case the party did not appeal to this Court, but the matter was settled, and would never have been heard of again had not someone gone about misrepresenting the Law Society to goad people to come and say something against Mr. Barber. All that could be brought against him in that transaction would be shown to be a mere mistake, the only evidence being that of a person who was shown to be perjured.
16. The learned Serjeant then proceeded to read the report of the Master, and to comment upon it as he proceeded. It stated that he (the Master) had been attended by Mr. Maughan [sic], the secretary of the Incorporated Law Society on behalf of that Society, and by Mr. Stevenson, as attorney for Mr. Barber, and also by Mr. Barber himself. It stated that he (the Master) had thought it right to enter upon what he termed the malpractice cases, but that in order that Mr. Barber might not be prejudiced, he had made a separate report upon those cases, if the Court should be of opinion that they ought not to have been entered into.
17. The learned Serjeant contended that it was quite clear that it never could have been intended that these cases should be inquired into by the Master, for nothing was known about them at the time when the matter was referred. The direction which the Court gave was that inquiry should be made into all matters which would prevent Mr. Barber from practising.
18. Mr. Justice COLERIDGE here said he understood the inquiry was to be general.
19. Mr. Justice WIGHTMAN also said that was his understanding.
20. Mr. Serjeant WILKINS continued. – As he understood the direction it was, that everything should be inquired into which had happened subsequent to the transportation.
21. The learned Serjeant then proceeded with his comments upon the forgery cases. Four indictments had been preferred against Mr. Barber, on the first of which he was acquitted, and on the second found guilty. The other two indictments were not tried, although he (the learned Serjeant) who appeared as Mr. Barber's counsel, had urged that they should be tried.
22. The first case was "Stewart's case," in which Mr. Barber was indicted with Joshua Fletcher and Georgiana Dorey, for inciting one Susannah Richards, then deceased, to forge an administration bond. Upon that indictment he was acquitted.
23. The Court would bear in mind that Mr. Fletcher was a gentleman of large property and of great respectability, as it appeared at that time. He was Mr. Barber's client, and as it turned out, was a man of extreme cunning, and took infinite pains that Mr. Barber should not discover the nature of the affair of which he was making him the instrument. On the other hand, Mr. Barber was a young man, and ambitious of success in his profession, and nothing could be more natural (in such circumstances) than that he should pay great respect to Mr. Fletcher, and be put off his guard. It was Fletcher who made everything ready for Mr. Barber,

and brought the parties to his office, and managed the business so successfully as to close up Mr. Barber's eyes, and not only his eyes, but those of Mr. Freshfield, the solicitor of the Bank of England, and the proctors, who had been equally imposed upon.

24. Here the learned Serjeant said he would clear himself from a statement which had been made to the effect that he had undertaken Mr. Barber's defence on the chance of the fee being raised. The fact was that he had been applied to by Mr. Bramhill [sic] to know whether he would undertake the defence of Mr. Barber for 50 guineas. His reply was that he would; and after the trial was over 15 guineas were left at his chambers. But he (the learned Serjeant) declared that he never did and never would hold a brief upon the terms of "no cure, no pay," and though there were cases which might sometimes lead him to remit the fee, he felt it would be disgraceful to him if he consented to hold a brief on the terms upon which it had been erroneously stated he had done.
25. It was stated in the Master's report that Fletcher had obtained the information which enabled him to practise the fraud from one William Christmas, a clerk in the Bank of England, who, according to the report, was guilty of a breach of duty in giving that information. By means of that information Fletcher had been enabled to get possession of £51 Long Annuities, and £739. 10s., being the unclaimed payments on the said Annuities standing in the name of one John Stuart [sic] deceased formerly of Great Marlow. This he effected by getting the abovenamed Susannah Richards to represent herself as the sister of the deceased, and to take out letters of administration to his goods and effects.
26. He (the learned Serjeant) would not undertake to say whether or not the information had been properly given by a clerk in the Bank; but it was certain that no more had been done in this case than had been done by Mr. Freshfield himself in Robins's case; and surely it could not be that the law was like cobwebs, which caught little flies but which great ones might break through.
27. The report then stated, that as the jury had acquitted Mr. Barber on the charge he (the Master) thought Mr. Barber was entitled to the benefit of his acquittal; But that he felt it to be his duty to bring before the Court a matter connected with this transaction which he thought affected Mr. Barber in his conduct as an attorney. That referred to a culpable neglect of Mr. Barber in not paying the legacy duty on the estate of the intestate to the government; and which it was said, though left with Mr. Barber, was never paid over at all.
28. In the first place, he (the learned Serjeant) contended that that was not a subject for this Court to inquire into. It was no part of the duty of an attorney to pay legacy duty; and it was only into his conduct as an attorney that this Court could make inquiry. Even in the case where an attorney had given an undertaking to pay legacy duty, the Court had refused an application to strike him off the rolls.
29. But it was said that it appeared that the money was paid over to Mr. Barber. The only evidence of that, however, was Mr. Barber's own memorial to the government. The Master said his impression was that it was paid on the 22nd of October, 1840, the day when the £739. 10s. was paid to the pretended Elizabeth Stewart.

30. In his affidavit Mr. Barber stated that he believed that the money was, immediately on its being applied for, paid over either to Fletcher or to one Griffin, the latter having been applied to from the Legacy Duty-office.
31. The learned Serjeant here read from Mr. Barber's pamphlet (p.10), a letter written by Fletcher to Barber on the subject of this legacy duty, which latter, he contended, showed how artfully and cunningly that person had acted, and which, he contended, showed that Mr. Barber was not an accomplice in any fraud.
32. In reference to this part of the transaction, the learned Serjeant also read passages from Mr. Barber's affidavit, in which he gave an account of the whole of this transaction, and showed what reason he had to place confidence in Fletcher's representations. He knew him to be a man of great apparent respectability and opulence, living in Southampton-place, Camberwell. He had acted as his solicitor from the year 1838; and it was not till the year 1840 that this pretended Elizabeth Stewart was introduced to him.
33. If he had had any doubt as to the identity of the person he would never have written a letter, as he had done, to Dr. Coxwell, nor would he have done several other acts, which the learned Serjeant enumerated, which tended to make evidence against him. The result of the whole was, that not only Mr. Barber, but the authorities at the Bank, as well as the proctors, were imposed upon.
34. The next case referred to in the report was "Slack's case;" but the Court would bear in mind that the Master had not reported upon them in the order of time. Stewart's case was in August, in the year 1840; Burchard's, in June 1841; Hunt's, in May, 1842; and Slack's case in October, 1842.
35. In Slack's case it appeared from the report that Mr. Barber was convicted of uttering a forged will of one Anne Slack, and it was upon this charge that he was convicted and sentenced to be transported for life. It was of the offence laid in this indictment more especially that Mr. Barber had received Her Majesty's free pardon.
36. The Master's report referred to numerous documents which had been laid before the Secretary of State, and which had induced him to advise Her Majesty to this act of justice. The learned Serjeant here read from Mr. Barber's pamphlet (p.66) a statement, dated September 2, 1844, made by one John Smith, a friend and fellow prisoner with both Fletcher and Sanders, who were indicted with him, to the effect that Sanders had solemnly assured him that Barber was entirely innocent; that everything was so arranged that Barber could have no reason to suspect any fraud; that Fletcher had always declared to him that Barber had no guilty knowledge whatever; and that neither he, his wife, nor Mrs. Dorey were known to Barber, except in the fictitious characters in which they were introduced to him by Fletcher. The statement also mentioned that the writer had observed that since Barber had come on board the *Agin-court* the conduct of Barber and Fletcher towards each other had been of the most unsocial character; and that Barber studiously avoided all intercourse with him from the first moment of their embarkation.

37. He also read the second statement made by Smith, a few days before his death, and dated Norfolk Island, November 6, 1844, from which it appeared that he had had several conversations with Fletcher, on Barber's case, and that he never denied that Barber was entirely innocent, but complained that Barber had placed him (Fletcher) in the lion's mouth, but for which he should have escaped by being evidence for the Crown.
38. Those statements were explained by the conduct of Mr. Barber when apprehended. He immediately prayed for the most searching investigation. He sent for his partner, Mr. Bircham, who went and fetched Fletcher. On being asked, Mr. Barber said he did not want time to prepare his defence, but [sic] challenge the most open investigation.
39. He prayed for a separate trial, in order that he might call these parties as witnesses, to explain the share which he had had in the transaction, but that was denied him.
40. The Learned Serjeant then read Fletcher's confession, from page 63 of Mr. Barber's pamphlet, which contained copies of several of the documents laid before Sir George Grey. It was as follows:-

June 28, 1844.

I solemnly declare that, to the best of my knowledge and belief, William Henry Barber had no guilty knowledge that the will of Anne Slack was a forgery, or that it was otherwise than a legitimate and proper matter of business. As such it was introduced by me to him, as stated in my first examination at the Mansion-house. And I further declare that to my knowledge and belief, he had no guilty knowledge of either of the cases which have recently formed the subject of indictment. I make this declaration with no other motive than to do an act of justice to Mr. Barber as far as lies in my power.

JOSHUA FLETCHER

41. The learned counsel also proceeded to read a copy of the second confession made by Fletcher on board the Agincourt, and published in *The Times* on the 4<sup>th</sup> of July, 1844. This confession stated that Mr. Barber knew nothing of the parties to the fraud till they were introduced to him in the fictitious characters which they assumed, and that appearances were so observed that there was nothing to excite the suspicion of his solicitor; that Mrs. Saunders [sic] was introduced to Mr. Barber as Miss Slack, disguised in such a manner as to induce him to believe she was the party she pretended to be; and that it was by his directions that Mr. Barber had written to Captain Foscett to ascertain if his sister-in-law was the owner of the stock. The confession referred to many other circumstances which had been relied upon as evidence of Mr. Barber's guilt, and stated that he had acted throughout the matter under his (Fletcher's) directions. It concluded by saying, that he (Fletcher) had never refused to admit Mr. Barber's innocence, though he had objected to sign or declare that which might have a tendency to prejudice himself.
42. They learned Serjeant then went fully into the facts connected with "Slack's case," as detailed in the Master's report, and contended that there was nothing to show that Mr. Barber had acted with want of prudence in the transaction, although it was clearly proved that the



scheme itself had been laid by Fletcher and his associates with the most consummate skill, so as to escape detection.

43. The Master in his report said it would be a question for the Court, whether Mr. Barber had acted properly in withholding from Captain Foskett, and from his sister-in-law Miss Slack, the nature and amount of the property respecting which he had corresponded with Captain Foskett. But on that point the learned Serjeant contended that it could not be expected that he would do so in violation of the positive instructions which he had received from his client.
44. Had it not been, however, for Captain Foskett's misleading him on the subject of Miss Slack's age, saying that she was 27 when she was, in fact, near 40, her identity would have been proved.
45. The report also referred to Mr. Barber's want of care in giving unsuspecting credit to Fletcher's account of the mode in which he alleged he had found out the person whom he represented to be really entitled to the stock, to which the learned Serjeant replied by calling the attention of the Court to the facts of the case, which, he contended, showed, that the position of the parties was such that Barber was well warranted in not suspecting that a person in Fletcher's position was likely to be the contriver of any fraud.
46. He then read from Mr. Barber's book (page 65) a confession made by William Sanders the day after he<sup>103</sup> sailed in the *Agincourt*, in which he acquitted Mr. Barber of any guilty participation in the transaction, and stated that he (Barber) had not received one farthing more than his professional remuneration, and that he made the declaration from an unfeigned desire of doing all the justice in his power to a person whom he had been instrumental in placing in a situation of the horrors of which he (Sanders) was then too painfully acquainted.
47. The learned counsel also read a similar statement by the same person on his arrival in Van Diemen's Land. He then read several passages at great length from Mr. Barber's own account of the transaction, and pages 36, 37, and 38 of his pamphlet, and said it seemed to him that the only fact which seemed to tell in the least against Mr. Barber was, that he had assisted a female client - the pretended Miss Slack, to a cab at the door, and that he had been so unnecessarily Courteous as to carry for her a bag containing 600 sovereigns. That lady, however, was to all appearance, suffering from the gout, which had been skilfully feigned in order to deceive him, and to lead him to suppose that she was really related to the party whose will was forged, who it was stated had died of the gout.
48. The learned counsel then came to "Burchard's case," which occurred in the year 1841, and in which Fletcher, Barber, and Georgiana Dorey were the parties accused. That case was not tried; but the facts of the case, as stated by the Master from the depositions, and Mr. Barber's affidavit, were that a will was forged purporting to be the will of Eliza Burchard, spinster, of Bath, and to bear the date the 14th of October 1825. By that will she bequeathed to her niece, E. Burchard, described as then living with her, the sum of £700 stock in the Three

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<sup>103</sup> Meaning Barber: Sanders sailed on the *Lord Auckland*.

per Cents. Reduced, and £300 Consols, standing in her name in the Bank books, and appointed her said niece sole executrix.

49. Barber was desired to take the necessary steps for proving that will, and accordingly accompanied the pretended executrix to his proctor in Doctors' Commons, and procured the will to be proved. Obtaining the probate he lodged it at the Will-office at the Bank, and prepared an application to the Bank for a transfer of the funds. He also accompanied the party to the Bank, where £446 arrears of dividends on the £700 stock was paid, and an order given to sell out the £700 stock, which was sold accordingly; but it did not appear from the report what became of the £300 stock.
50. In this case the Master reported that no legacy duty was paid, but it did not appear that any money was paid to or retained by Mr. Barber, out of which to pay the same.
51. The only point in this case which the learned Serjeant dwelt upon was, the statement of the Master that he thought it must be taken for granted that Mr. Barber was present when the money was paid, of which he contended there was no evidence whatever.
52. He then came to "Hunt's case," which occurred in 1842. Upon this case, Sanders pleaded "guilty," but the other parties having been convicted in "Slack's case," this indictment was not tried.
53. The Master stated that the evidence in this case consisted of the depositions, an affidavit made by Mr. Barber on the 15th of May, 1849, and a bill of costs of Messrs. Barber and Bircham, containing the charges made by them for the business done in relation to the matter.
54. The result of that evidence was, that one Mary Hunt, formerly of Bristol, and a widow, died in 1806, leaving the sum of £1,200, Three per Cent. Consols, in the Bank unknown to her executors. That sum was accordingly never dealt with by them, and no dividend having been received for 10 years, the amount was then carried over to the account of the Commissioners for the Reduction of the National Debt.
55. In May, 1843, one William Sanders, introduced by Fletcher, went to Mr. Barber's office under the name of Thomas Hunt, and produced a will, purporting to be the will of Mary Hunt, widow, formerly of Bath, and then of Spring Street, London, and dated the 14th of December, 1829. By that will she gave £1,210, then standing in her name in the Three per Cent. Consols, to her grandson, Thomas Hunt, mariner, and appointed him executor.
56. Mr. Barber accompanied Hunt to a proctor in Doctor's Commons, and procured the will to be proved. The money was afterwards transferred into Hunt's name.
57. Mr. Barber, in his affidavit, stated that when they were at the proctor's office, the clerk inquired why the will had not been proved before, to which Hunt replied, that he had been at sea, and only lately returned; upon which Mr. Barber recommended that someone should make a declaration to satisfy the Bank of his identity. Accordingly, a day or two afterwards, Hunt produced one Mary Howard, who made such a declaration; but the Master added, that

he thought such a declaration must have been drawn by Mr. Barber, who, however, stated that it was drawn by his partner Mr. Bircham.

58. The Master also stated, that in this case the legacy duty was not paid, though there were several charges in Mr. Barber's bill in reference to it. The total bill of charges, including £40 probate duty, was stated by the Master to be £81. 4s. 7d., which he said he had no doubt Mr. Barber had received from the pretended legatee; but the bill itself, as entered in Mr. Barber's billbook, was in the handwriting of a clerk named Fosberry, who had gone to Australia. That circumstance Mr. Barber accounted for by saying that he thought it probable that his clerk had entered the bill prospectively in the book, but that he had no recollection of having received such legacy duty, and did not believe that he had done so.
59. The Master, however, said he could not rely upon that statement, and that he believed that such a bill was delivered as entered in the billbook. The learned Serjeant commented at some length upon this part of the Master's report, and asked why the learned Master had not stated the grounds upon which he formed his opinion. There was not a tittle of evidence in support of it. It was not proved that such a bill was ever made out, although it was so stated by the Master; but the Court, while paying every respect to the Master's opinion, would look at the facts as they were proved, and upon them only would come to a decision.
60. The report then called the attention of the Court to the circumstances that in Slack's, Burchard's, and Hunt's cases, where the money was obtained under forged wills, each of them specifically mentioned the several sums of stock standing in the names of the testatrixes, that each will contained a residuary bequests [sic] in substance similar; and that the residuary legatee was appointed sole executor or executrix, and that in all the cases the parties were introduced to Mr. Barber by Fletcher.
61. The learned Serjeant upon this remarked that these circumstances would not be likely to strike the mind of Mr. Barber, especially when it was considered that the transactions extended over several years, with considerable intervals of time intervening, and that the wills were drawn up in the usual formal language.
62. The report went on to state that Mr. Barber had been informed my Messrs Pickering and Co., in Stewart's case, that the intestate had left no sister or any other relation, and that his client had no claim; but the learned Serjeant contended, that if Messrs. Pickering and Co. had had any belief that Mr. Barber was endeavouring to practise a fraud, it was their duty to have given information to the authorities at the Bank. No notice, however, was taken of the matter, till Mr. Barber was taken up on Slack's case, when the papers relating to it were found in their place in Mr. Barber's office.
63. The learned Serjeant then passed a strong panegyric on Mr. Barber for the care and correctness with which he had kept his accounts and papers, many of which he would certainly have destroyed if he had been, as was suggested, a guilty participator in the transactions; and, upon the whole, he trusted that the Court, upon a careful examination of the documents now before it, would come to the conclusion that Mr. Barber was not only not guilty of fraud, but that he had not been guilty of that want of prudence and caution which was imputed to him.

64. The learned Serjeant then said he had finished his comments upon the four forgery cases, and that he now felt unable, from exhaustion, to commence his discourse upon the malpractice cases. With the permission of the Court, he would, therefore, go on with his remarks upon them in the morning. (The learned Serjeant had spoken nearly six hours.)
65. Mr. Justice PATTESON said the Court would now adjourn, and the learned Serjeant might continue his comments in the morning.
66. The Court then adjourned, at half-past 4 o'clock.

## **29 January 1850<sup>104</sup>**

67. Mr. Serjeant WILKINS said, that having yesterday called the attention of the Court to the facts connected with the four “forgery cases” in which it was alleged Mr. Barber was implicated, he would now proceed to what were called the “malpractice cases.” The first case was “In re Dommett,” and related to some transactions connected with the London Investment Company.
68. Mr. Justice PATTESON said the Master had reported that there was no reason to blame Mr. Barber in reference to that transaction.
69. Mr. Justice COLERIDGE.- The Master says that no distinct charge was made, and that he does not see anything too inculpate or criminate Mr. Barber.
70. Mr. Serjeant WILKINS then said he should proceed to the next case, “In re Flaner,” and here he could not but express his astonishment that such a charge had ever been preferred by the Law Society. That charge, however, had been made, and, though the Master said it could not be sustained, the Law Society had not abandoned it.
71. Sir F. THESIGER here stated that the only cases upon which he should rely were “Robins’s case,” the case of “Guest v. Reynolds,” and “Stidolph’s case.”
72. Mr. Serjeant WILKINS then proceeded with the examination of the Master’s report in “Robins’s case.” he contended that Fletcher’s conduct in this transaction was not illegal. He had undertaken to restore to the executors of Mr. Robins some property of which they were ignorant, and put Mr. Barber forward to negotiate that transaction. Mr. Barber applied to the executors of Mr. Robins, who saw no reason to blame him in the matter, and authorised their solicitor, Mr. Smedley, to communicate with him upon the subject.
73. It would appear, in the sequel, that this Mr. Smedley, who had a name in his profession, had presumed upon it, and had acted with great hypocrisy towards Mr. Barber. He had also stated facts which it would be seen were denied by Mr. Barber in his affidavit, and that, too, under circumstances which tended to confirm Mr. Barber. It appeared that Mr. Smedley was perfectly willing to carry on the business with Mr. Barber until he was called upon to fulfil the contract into which he had entered, and it was not till then he felt the impropriety of the

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<sup>104</sup> *The Times* (1850) ‘Court of Queen’s Bench... In re W.H. Barber, an Attorney’ 30 January.

transaction. Mr. Smedley had paid the sum of £55 to Fletcher, and £50 to Barber for his law charges in that business, which arose out of these circumstances:-

74. It appeared that a Mr. George Robins, an auctioneer, formerly residing at Warwick-house, Regent-street, was possessed of the sum of £1,040, 3 per Cent. Reduced Annuities, in the books of the Bank of England, and that the dividends thereon had not been received for the space of 10 years. The sum of £390, the amount of the dividends thereon, had been therefore carried by the Bank to the account of the Commissioners for the Reduction of the National Debt. Mr. Robins's executors were ignorant that such property belonged to their testator; and Mr. Fletcher was the instrument of restoring that property to the rightful owners. It was true that in so doing Fletcher did not pretend to be actuated by motives of philanthropy, but good had resulted, as was often the case where other speculations were undertaken for similar motives.
75. In the month of January, 1842, it was stated in the Master's report that Mr. Barber put himself in communication with Mr. Read [sic], one of Mr. Robins's executors, withholding at the same time all mention of the name of the party employing him, or of the nature and amount of the property, unless the parties would agree to pay his employer one-sixth of the sum to be recovered. The report of the Master as to the terms of the agreement was incorrect, for, on reference to the agreement, it would be found that the terms were, that the payment was not to exceed one-sixth; and, in fact, only one-tenth had been subsequently paid when sum of £1,430 was recovered. Neither was that an exorbitant sum to charge, when it was considered that it was to include all the expenses, legal and otherwise, and that it was uncertain whether it might not turn out that Mr. Robins, being an auctioneer, was merely a trustee of the money, and that it might be thrown into Chancery.
76. It was also a part of the agreement that if nothing were recovered nothing should be paid. The agreement was in writing, and dated the 10th of February, 1842, between the executors of Mr. Robins, of the one part, and one Henry Stein Turrell, of the other part. It recited that Turrell was possessed of certain information and facilities for recovering certain property, and contained an agreement by the executors to pay Turrell not exceeding one-sixth of the sum recovered, and to assist Turrell by the production of documents, &c., at Turrell's expense.
77. It was stated by Mr. Smedley that he had remonstrated with Mr. Barber for adopting that mode of conducting business, and warned him that some day it would bring him into difficulty; but this was altogether denied by Mr. Barber in his affidavit, who stated that so far was that from from [sic] being the case, that Mr. Smedley afterwards employed him (Mr. Barber) to obtain similar information for him in reference to a transaction of the same kind, and for which services Mr. Smedley afterwards paid the sum of £3.
78. The agreement was signed by Mr. Barber on behalf of Mr. Turrell; and after its execution the money was recovered by the executors, who, through Mr. Smedley, paid over to Mr. Barber £105 for his and Mr. Turrell's expenses. The Master in his report said, that Turrell was an entire stranger to this transaction, and that his name was used by Barber without his sanction or knowledge; and that the party by whom Barber was employed was Fletcher. In explanation of that Mr. Barber stated that he had at first inserted the name of Fletcher, but

that he preferred that the name of someone known to Mr. Barber or his partner should be inserted in its stead, and that he therefore inserted the name of Turrell, who was his intimate friend. The learned Serjeant contended that Mr. Turrell could not in any way be prejudiced by his name being so used, and that there had been no deception, for he had told Mr. Smedley that that was not the real name of the party, and Mr. Smedley observed that he supposed it was only a *nom de guerre*. It was no uncommon thing to introduce the names of nominal parties in that way, and was continually done in the most respectable houses of business.

79. Mr. Justice PATTESON here said it was not a question of prejudice but, of truth or falsehood. He trusted that such a practise was not general, and the sooner it was put an end to, if it existed, the better it would be. His Lordship said he would never give his sanction to the recital of a fact which was false.
80. Mr. Serjeant WILKINS said he could not defend the practice but he contended that if there was no intention to deceive, and if the Court should come to the conclusion that Mr. Barber's statement was true that he had informed Mr. Smedley of the true nature of the case, it was not such an act of impropriety as the Court would feel disposed to visit heavily upon Mr. Barber.
81. The Master stated the Barber must have known that Fletcher obtained information by improper means, and he submitted to the Court how far he was blameable in acting at all as an attorney in such a transaction. Mr. Barber in his affidavit stated that information of this very property had been given to Mr. Robins's executor's [sic] by Mr. Freshfield, the solicitor of the Bank, but that the matter had been overlooked by them, and that they had been threatened with proceedings by Mr. Robins's family for their right. Surely there was no more impropriety in Mr. Barber's giving the information than when Mr. Freshfield gave it, especially when the Court bore in mind Mr. Barber's statement, that he believed the information had been obtained from a stockbroker.
82. Mr. Smedley, in his affidavit, stated that he had remonstrated with Mr. Barber both on the principle of the proceeding and on the amount claimed at the time when he paid the money, though it was proved by Mr. Barber's affidavit, as well as by that of his clerk, Macnamara, that money was not paid to Mr. Barber in person, but to the clerk in his absence.
83. The learned Serjeant here read from Mr. Barber's book (pp.52, 53) the account of this transaction, and also from his affidavit, as well as from that of Macnamara, his clerk, and from Mr. Smedley's two affidavits, and commented strongly upon the circumstance that Mr. Smedley had not denied that he had employed Mr. Barber upon a similar matter and had paid him £3 for his trouble. He could not venture to deny that, though he could deny conversations, for he could not tell but Mr. Barber had the papers still in his possession. If Mr. Smedley's statement was true, Satan himself could not have preached better than he had, nor could he have done worse than when he had the next moment held out a bribe to Mr. Barber to practise the contrary; and it was such a man who now came forward to break a bruised reed, and to crush a man who had suffered more than anyone could conceive. The learned Serjeant said he felt that he spoke with more warmth and feeling than was usual, or perhaps proper, in addressing a higher order of intellects; but he confessed that he felt so

deeply in this case that he could sacrifice any prospects of success in his profession would he but live to see the day when William Henry Barber, his friend - for such he called him, - should regain his position in society. He should consider that, if that end were attained, he had not lived in vain. The learned Serjeant here appeared quite overcome by his feelings, and sat down for a few minutes.

84. He then continued, and said that when the Court had to decide upon conflicting statements, they could only decide from the surrounding circumstances; and here it was manifest that Mr. Smedley could not deny that he had employed Mr. Barber as stated, and a letter was produced before the Court in which Mr. Smedley addressed Mr. Barber with the appellation "Dear Sir," and signed his name, "Yours truly, Francis Smedley." That letter was found by Mr. Barber at a hatter's in Bond-street, on his return to England, and showed that Mr. Smedley had continued on good terms with Mr. Barber after the transaction.
85. He then came to the case of "Guest v. Reynolds." This case consisted of a charge against Mr. Barber of having, in an affidavit, sworn that he had paid two several sums of money to two witnesses in the cause. The fact was clearly proved, but it was also shown that two days previously he had written to a Mr. Stidolph, an auctioneer at Tunbridge [sic], in Kent, requesting him to pay the money; and, as Mr. Stidolph had acted as a sort of agent for him, and there was a running account between them, with a balance general in his favour, the learned serjeant contended that he (Mr. Barber) might reasonably suppose that his agent had done what he ought to have done, and that the money had been paid.
86. Mr. Justice PATTESON said, that in no proceeding was there so much looseness as in affidavits of increase, but he thought it right to say when such cases were brought before the Court, that no man had a right to swear that money had been paid till he had ascertained the fact.
87. Mr. Serjeant WILKINS then proceeded to Stidolph's case, in which a charge was made against Mr. Barber, by Mr. Stidolph, the auctioneer at Tonbridge, of having neglected to pay the premiums upon an insurance which Mr. Barber had effected for him upon his life in the Union Assurance-office, of which society Mr. Barber was an agent, though he had charged the amount of the premiums annually in his account to Mr. Stidolph. Upon this point the affidavits of Mr. Barber and Mr. Stidolph were quite contradictory, and Mr. Barber denied that he had ever charged more than one premium. Mr. Barber complained that he was unable to give all the information which he desired upon these points in consequence of the dispersion of his papers on his transportation; but he stated in his affidavit that he had discovered one important document which showed the account between himself and Stidolph, from which it appeared that only one payment was charged to Mr. Stidolph, and a balance of £5 was shown to be due to Mr. Barber.
88. On the other hand, one or two letters acknowledging the receipt of money for premiums were set out in Stidolph's affidavit, which the learned serjeant said were to be explained by supposing that they were sent prospectively. He also showed that Stidolph's statement, that on making the discovery that the premiums had not been paid he had discontinued all intercourse or business transactions with Mr. Barber, was not true, for it was sworn, and not

denied, that Mr. Barber had acted professionally in the sale of some property at Tonbridge in which Mr. Stidolph was interested, and at which sale he acted as auctioneer.

89. The learned serjeant was proceeding to read numerous documents in Mr. Barber's pamphlet in reference to his sufferings while a convict abroad in Norfolk island, and the exemplary manner in which he bore those sufferings; and particularly the certificate written by the Rev. T.B. Naylor, the chaplain, since deceased; But he was stopped by
90. Mr. Justice PATTESON, who said the Court could not look at certificates of that kind. They were not statements made on oath.
91. Mr. Serjeant WILKINS said, they had been received before the Master without objection; Indeed, the book had been handed in by Mr. Maughan [sic], the secretary to the law institution.
92. Mr. Justice PATTESON said, the Court would be willing to take it as a fact that Mr. Barber had conducted himself in a most exemplary manner.
93. Mr. Serjeant WILKINS said, he felt that Mr. Barber was rather taken by surprise, for he would have been able to get some of the documents verified by affidavit, if he had known that the reading of the documents which had been laid before Sir George Grey, and upon which he had recommended Mr. Barber to Her Majesty for a free pardon, would be resisted. He (the learned serjeant) would, however, bow to the decision of the Court, though with a strong opinion that without hearing those documents the Court would not be able to form a correct opinion on Mr. Barber's case; and concluded by submitting to the Court - first, that the Queen's pardon was an answer to the criminal charges; secondly, that the malpractices attributed to Mr. Barber were not in respect of acts done by him in his capacity of an attorney, and consequently could not be now inquired into; and thirdly, that if the Court should be against him upon that point the charges had been fully met and answered.
94. Mr. Justice PATTESON said that, having heard the learned Serjeant, the Court was of opinion that he was entitled to have a rule *nisi*.
95. Sir F. THESIGER (with whom was Mr. Bovill) then rose to show cause against the rule in the first instance, and said, the learned Serjeant had engrossed so much time that but little opportunity was afforded him to enter into the facts of the case consistently with the other business of the Court.
96. Mr. Justice PATTESON said, the Court could not go on with this case beyond that day.
97. Sir F. THESIGER said, he would endeavour to compress his observations within the narrowest compass. Considering the sanguine view of the case taken by Mr. Serjeant Wilkins, and the strong feeling which he had infused into it, it was not at all surprising that he had made some very strong observations on different persons connected with the various transactions. The mode by which his learned friend had identified himself with his client might be very generous, but it certainly was irregular, and somewhat embarrassing to the advocate opposed to him. He (Sir F. Thesiger) felt, however, that he had a public duty to



discharge, which he trusted he should be able to discharge without any personal feeling, but simply with a desire that the facts may be brought before the Court, and the judgment of the Court given upon them.

98. Some misapprehension appeared to exist as to the powers of the Incorporated Law Society. Under the 25th section of the recent statute that society was appointed to act as the registrar of attorneys' certificates; and they were required, when a party had not taken out his certificate for a year, not to issue such certificate without the order of the Court or a judge. It was therefore their duty to refer the consideration of this question to the Court; and the Court, considering it as a case in which the certificate should not issue as of course, referred to the Master to consider any cases which might render it improper that it should be given him. On that occasion his learned friend (Serjeant Wilkins) had asserted that the fullest investigation should take place.
99. He contended that the Master had performed his duty correctly in drawing up the rule as he had done, for as originally drawn up the rule would have limited the inquiry to the circumstances under which Mr. Barber had discontinued to practise, and his subsequent conduct. If that only had been referred to the Master the inquiry would have been an idle one.
100. He (Sir F. Thesiger) then complained of the attack which had been made on the Master for the manner in which he had performed his duty - a duty of a most painful nature, but which the Master had discharged in such a manner as to challenge any man to impugn either the purity or integrity of his judgement.
101. The Law Society also would have neglected their duty if they had not laid before the Master the facts which were communicated to them, in consequence of the publicity given to Mr. Barber's application to the Court, though it was quite immaterial to them what reports the Master might make upon them.
102. His learned friend had taken bold ground on the present occasion, and said that Mr. Barber ought never to have attempted to answer those charges, but ought to have relied on the Queen's pardon as a complete answer to them.
103. Mr. Serjeant WILKINS explained that what he said was, that so far as the "forgery cases" were concerned, the Queen's pardon was an answer; but, in reference to the "malpractice cases," that his certificate might be opposed on such grounds as would be admitted upon an application to strike an attorney off the rolls.
104. Sir F. THESIGER continued, and, referring to the authorities cited by Mr. Serjeant Wilkins, said, the Queen's pardon admitted a person to all those rights and privileges which belonged to him in common with every citizen. From that time he ceased to have any of the civil liabilities which attached to that crime. But the Queen's pardon did not remove the moral taint, so as to place a man in every respect in the same position as he was in before he had committed a crime. Suppose a man convicted of a crime upon the clearest evidence, but, but upon some technical point, the judges, on a case reserved, should be of opinion that he was improperly convicted. In that case a free pardon would be recommended and given. But

would it be seriously contended that the Court would be precluded, by the Queen's pardon, from saying that such a person was not proper to be admitted as an attorney of this Court?

105. Or, suppose that, while such a person had been undergoing his sentence, his conduct had been so good that the Queen should be recommended to grant him a free pardon, would that be a case in which it could be argued that the Court was precluded by the pardon from going into an investigation of the applicant's conduct?
106. The present was not a question of the punishment of crime, but it was an application to the discretion of the Court whether a particular person was proper to be re-admitted; and on that inquiry the Court was not bound to consider as conclusive on their minds the fact that Mr. Barber had been so fortunate as to obtain a pardon from the Crown. The letter of Sir George Grey did not warrant the strong observations which had been made upon it, although it acquitted Mr. Barber of a "guilty participation in the frauds of which he had been made the instrument," it contained the expression of Sir George Grey's opinion, that "the verdict of the jury was warranted by the facts proved at his trial," and that "greater prudence and caution" on the part of Mr. Barber "would have exempted him from the suspicion to which his conduct in the transactions in question naturally exposed him." It appeared, however, that, notwithstanding the great consideration which it was said the case had undergone at the Home-office, a mistake had been made by that office as to the crime of which Mr. Barber had been convicted, it being stated in the original pardon that he had been convicted as an accessory before the fact to a forgery, whereas the fact was that he was convicted of uttering a forged will knowing it to be forged. It was clear that the evidence which might be insufficient to sustain one of those charges might be amply sufficient to sustain the other.
107. He (Sir F. Thesiger) was not, however, anxious to diminish the force which the pardon ought to have on the mind of the Court, nor was he unwilling to admit that Mr. Barber might have been exposed to improper and partial severity under transportation, and that he had conducted himself in an exemplary manner. How far those circumstances might have weighed upon the mind of the Secretary of State it was impossible to say; but it must be borne in mind that the jury, after a long trial, came to a conclusion which Sir G. Grey said was justified by the facts proved, and the verdict so given could not be treated as nothing in this investigation.
108. In this Court, however, we possessed advantages for the consideration of the case which were not enjoyed either by the jury or by the Secretary of State, for we could extend the inquiry so as to embrace the whole of Mr. Barber's conduct in reference to these forged wills.
109. It was a mistake when his learned friend (Serjeant Wilkins) said that these transactions extended over four years. The first transaction, "Stewart's case," took place on the 14<sup>th</sup> of August 1840, and the last, "Slack's case," on the 4<sup>th</sup> of October, 1842, thus embracing only a period of two years and less than two months. And when "Robins' case" was interposed between "Barchard's [sic] case," which was the second, and "Hunt's case," which was the third, he (Sir F. Thesiger) thought enough reason would be shown to excite the suspicion of a cautious, curious, and inquisitive man, such as Mr. Barber was described to be.

110. The greater part of the answers given by Mr. Barber to the charges were contained in his own affidavit and in his pamphlet, in which he had put everything in the best light. It was not the fact, as had been stated, that before these transactions Mr. Fletcher was an old client of Mr. Barber's. He had only become acquainted with him at the end of the year 1838 or the beginning of 1839; and in his pamphlet he said that about a year afterwards he introduced Stewart's case to him.
111. The charge against Mr. Barber was, that Fletcher was acting surreptitiously in getting the information about the stock lying in the Bank; to which the learned Serjeant had answered that it was a disputed question of ethics whether there was an impropriety at all in it. However that might be, it was somewhat extraordinary to observe what facility Mr. Barber received and acted on the information he obtained.
112. In the first case, which was one of administration, a person had been introduced to Mr. Barber as the sister and next of kin of the deceased, John Stewart, who died at Great Marlow. The only evidence of the identity of the body was one affidavit. It would be said he went down to Great Marlow, and there made inquiries, but the only information he there obtained was that one person had heard the deceased say that he had a sister. He was at once satisfied with that inquiry, and went with the pretended Elizabeth Stewart to the Bank, where he was present when the money was paid to her.
113. The learned counsel then referred to some correspondence which Mr. Barber had had with Messrs. Thompson and Pickering on the subject of some wages which he claimed as due to the late John Stewart, and which correspondence ought to have led even a blind man to pause.
114. He also referred to the fact that Mr. Barber had received the legacy duty in this case, which, instead of paying over to the government, he had converted to his own use. The learned serjeant had cited cases to show that, as Mr. Barber had not received his money in his capacity of attorney, the Court could not inquire into it; but he (Sir F. Thesiger) would show from several cases which he cited, that where the employment was so connected with the professional character of the party that the character was the ground of the employment, the Court would interfere; and he urged this circumstance in support of the charge of criminal negligence in Stewart's case.
115. It was said by Mr. Serjeant Wilkins that the information as to the non-payment of this duty was given by Mr. Barber himself in his pamphlet (page 10), where he printed a copy of a letter which he had received from Fletcher. Mr. Barber, however, admitted that the letter was true to some extent, for he admitted that he had received the money, though he said he had afterwards paid it to Fletcher or Griffin.
116. it was clear from Stidolph's case that at that time he was raising money by bills; and it was but reasonable suppose that it might be very convenient to him to retain this money.
117. The learned counsel then said he was about to proceed to a review of the will cases, which commenced in June, 1841, and terminated in March, 1843; and requested the particular

attention of the Court to some observations introductory to all those cases. In all the three cases, Burchard's, Hunt's, and Slack's, the wills were in precisely the same terms; the stock was specifically described; one single individual was appointed the sole executor or executrix; and all the witnesses to the signatures were given with their names only, without any address. Two wills also were in the same handwriting, for the original wills were produced from Doctors' Commons before the Master.

118. Mr. Serjeant WILKINS objected to that statement, as he understood it was not the fact.
119. Master TURNER, on being appealed to, said the wills were produced and resembled one another, but the resemblance was not so satisfactory to his mind as to induce him to report it as a fact to the Court.
120. Sir F. THESIGER said the attestations in those two wills were in the same form as prescribed by the Wills Act, though made before the act passed, so that, unless an attorney of experience intended to shut his eyes, it was impossible that so striking a fact should have escaped his attention.
121. Master TURNER here said the attestation was in the common form, so that he did not attach much importance to their being in the same terms.
122. Sir F. THESIGER then commented on the circumstance that three different proctors had been employed by Mr. Barber, and suggested that if he had on each occasion gone to the same proctor, he would have been struck with the coincidences referred to, and, if fraud was contemplated, it would have been discovered. The explanation given by Mr. Barber of his reason for going to different proctors was far from satisfactory; neither was there any reason to complain of Mr. Freshfield's giving the information which he had done to Mr. Robins's executors. By the 59<sup>th</sup> George III., when dividends were unclaimed for 10 years, the money was paid by the Bank to the Commissioners for the Reduction of the National Debt, and the names of the parties entitled were published for public information; and Mr. Freshfield, in giving that information was no more to blame than if engaged in the ordinary duty of his office as solicitor.
123. Mr. Justice PATTESON.- The Bank only publishes the names of the parties; but here the amount and particulars of the stock were communicated.
124. Sir F. THESIGER then called the attention of the Court to "Burchard's case," which occurred in June, 1841. That was the first will case, and the circumstances relating to it were calculated to rouse Mr. Barber's suspicions. It became necessary for him to address a letter to the executrix of Mrs Burchard, who represented herself as residing in Russell-street, Bloomsbury. He wrote a letter, which he addressed to her, but it was returned with the words "Not known" written upon it. He then sent another letter by a messenger, and shortly afterwards Elizabeth Burchard made her appearance in Mr. Barber's office.
125. Then he ought to have paused. He ought to have had some doubt, arising from the administration case of Miss Stewart, but, instead of hesitating in this case, he went to the Bank and assisted in getting the money paid; a considerable amount being paid in gold.

126. Before the next will case, which was that of “Hunt,” there intervened Robins’s case, which began in 1841 and ripened in 1842.
127. Mr. Justice COLERIDGE.- Does it appear whether Mr. Robins knew of his interest in the stock?
128. Sir F. THESIGER.- That fact did not appear, but Barber was trafficking for Fletcher with a secret which he knew had been improperly obtained; and at length the agreement had been entered into by which the executrix agreed to pay a sum not exceeding one-sixth of the sum which should be recovered. In that agreement Mr. Turrell’s name had been used by Barber without his sanction or knowledge. It was said by Mr. Barber that he told Mr. Smedley that that was not the real name of the party, but that statement was distinctly negatived by Mr. Smedley in his affidavit, who positively swore that he never used the words *nom de guerre*, as attributed to him.
129. How could Mr. Barber justify the use of Mr. Turrell’s name, in documents like these, without his sanction? It was said to be a usual practice with attorneys and conveyancers to do so. The contrary, he believed, was the case. A positive falsehood had been recited. But it was said that Mr. Turrell was not prejudiced in any way. But was it no prejudice for a respectable man to find his name implicated in a transaction of this kind? It was true he had not complained, for he felt that his reputation was safe.
130. With that case of Mr. Robins’s fresh in his recollection, it having closed on the 9th of April, 1842, by the payment of £105, the next will case (“Hunt’s”) was introduced to Mr. Barber in May, 1842. A person calling himself Hunt came to Mr. Barber with a will of his alleged grandmother, purporting to have been made in the year 1829. The dividends on the property had not been paid since the year 1806. Hunt accounted for the will not having been proved by saying that he had been at sea, and a day or two afterwards produced one Mary Howard, who made a declaration of his identity. Mr. Barber, without any hesitation, took her statement for granted, and prepared the declaration, which was signed by him, upon which the money was paid over to Hunt.
131. In this case, also, there was a non-payment of legacy duty, which, however, was deducted, as appeared by a copy of the bill entered by Barber’s clerk in the bill-book. Mr. Barber, however, denied that he had received the money, and suggested that the clerk must have paid out the bill in the book prospectively. That clerk, Fosberry, was now said to be in Australia; but, as Mr. Barber had not denied that he had received the other payments mentioned in the bill, such as probate duty, &c, the Master had properly come to the conclusion that he had received the legacy duty likewise.
132. He came now to Slack’s case, which was the last, and the one upon which Mr. Barber had been convicted; and he (Sir F. Thesiger) would undertake to show that the verdict was a just and righteous one.
133. The case commenced on the 4th of October, 1842, and there could be no doubt that Mr. Barber originally believed that it was a transaction similar to that of Robins’s executors, viz.,

one of unclaimed dividends. On the 4th of October Mr. Barber wrote to Captain Foscett, and informed him that he had occasion to ascertain the legal representative of one Ann Slack, who formerly lived in Smith-street, Chelsea. He received an answer on the 13th of October from Captain Foscett informing him that Miss Ann Slack was his wife's sister, and that she resided with them. On the 25th of October Mr. Barber wrote again, saying that as he had discovered from an entry at Somerset-house that a Miss Ann Slack, formerly of Chelsea, had died at Bath, he had some doubt as to the identity, but, if it would not be too much trouble, he should like to be informed whether Mrs Foscett's sister ever resided in Smith-street, Chelsea, and whether she spelt her name Anne with an "e"?

134. On the 27th of October, Captain Foscett wrote to say that Miss Slack did formerly reside in Smith-street, Chelsea, but that for the last 12 years she had resided with himself and her sister. On the 29th of October Mr. Barber wrote to Captain Foscett requesting to be favoured with a call, when the subject of the inquiry would be explained. Captain Foscett called accordingly; and here great emphasis had been laid on Captain Foscett's concealing from Mr. Barber Miss Slack's real age, and so leading him to suppose that she was not the real person he was in search of. But that circumstance did not satisfy Mr. Barber that she was not the real person, for he continued to correspond with Captain Foscett on the subject; and in the month of November, 1842, he wrote a letter to be favoured with the names of Miss Slack's trustees.
135. On the 12th of December he said that the party after whom he was inquiring was entitled to a small portion of stock in the funds, though it amounted to £3,500. On the 23d of January, 1843, Mr. Barber again wrote to the attorneys of Captain Foscett, saying that they (the firm) had come to the conclusion that Miss Slack was not identical with the right party, and that if in their investigations they should discover her they would inform him (the attorney), for the satisfaction of the young lady and her friends. The learned counsel called the particular attention of the Court to the promise contained at the end of that letter, as being most important in connexion with what would follow.
136. Shortly after this Fletcher came to Mr. Barber, and told him a most extraordinary story of the manner in which he had discovered the real Ann Slack, which the learned counsel read from page 39 of Mr. Barber's book. It was thus proved that Mr. Barber was aware of three Ann Slacks who had lived in Smith street, Chelsea; one referred to in his letter to Captain Foscett as Ann Slack, who died at Bath, and who formerly resided in Chelsea; the second the sister-in-law of Captain Foscett; and the third was the false claimant. Was it possible, then, to suppose that he had been so far deceived as to believe that this improbable story of Fletcher's, about his accidentally discovering Ann Slack, was true? One would have supposed that, instead of agreeing to receive the pretended Ann Slack the next morning, he would have told Mr. Fletcher of the manner in which he had discontinued his correspondence with Captain Foscett, and of the promise which he had made to communicate with him in case he should discover the real person. But, instead of doing that, and merely, it would seem, because she was dressed in black and looked respectable, he immediately entered on the transaction, and the paper was prepared and filled with the date of the 17th of February.
137. Mr. Serjeant WILKINS.- But from the certificate of death produced.

138. Sir. F. THESIGER continued, and argued that from the whole facts of the case Mr. Barber must have had a guilty knowledge; he must have known that the will was forged, and been a confederate with Fletcher.
139. Mr. Justice COLERIDGE observed that the will was dated the 3d of June, 1842, and mentioned the specific stock, though the dividends had not been received for so many years.
140. Sir. F. THESIGER.- The stock amounted to £3,500, and the dividends to £1,151, making a total of £4,651. The property was sworn under £5,000, and when the money was paid at the Bank the sum of £600 was paid in gold, which Mr. Barber carried for the pretended Miss Slack in a bag to the cab. It was strange indeed that all these circumstances never excited Mr. Barber's suspicion.
141. It was for the Court now to say whether, if the case had been submitted to a jury in a different manner, the verdict would have been otherwise; and, while the Court would pay due deference to the opinion of the Secretary of State, they would, on the other hand, not be disposed likely to question the propriety of a verdict given by a jury on a trial in which the greatest care was taken, and when the facts underwent the fullest investigation. On a motion like the present, when Mr. Barber was applying to be re-admitted to the responsible position of an officer of this Court, the Court would come to the conclusion that the verdict of the jury was correct, for it would be most perilous if the Court should express any doubt as to the propriety of a verdict which had been so pronounced by the jury.
142. Mr. Serjeant WILKINS said he had never impeached the verdict of the jury. He admitted the verdict was a right one, as stated by Sir George Grey, upon the evidence laid before the jury; but the Court was now hearing the case again upon new facts.
143. Mr. Justice PATTESON said it was a question whether, if the facts now before the Court had been laid before the jury, they would have found a verdict they did. Suppose at a trial there had been a question of identity, and a verdict of guilty. It might be that there was evidence which was not admissible before a jury, but which would establish that there had been a mistake as to the identity. A rehearing would not in that case tend to impeach the verdict.
144. Sir F. THESIGER said he submitted that that was a different state of facts, and concluded this branch of the case.
145. It being now just 5 o'clock, it was agreed that if Sir F. Thesiger could arrange to continue his argument on the malpractice cases, the Court would sit, by consent, on two days out of term, viz., on the 18th and 19th of February, when the case might be concluded. The Court accordingly rose at 5 o'clock.

## 9 May 1850<sup>105</sup>

146. Sir F. THESIGER now resumed his argument in showing cause against a rule which had been granted to allow William Henry Barber, an attorney of this Court, to take out a

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<sup>105</sup> *The Times* (1850) 'Court of Queen's Bench, Westminster' 10 May.

certificate to practise as an attorney. The learned counsel commenced by saying that in his previous address he had concluded the observations which he intended to make up on what were called the forgery cases in which Mr. Barber had been implicated; he would only remark that the Court, having all four cases before it, had a great advantage over the Secretary of State, who had inquired only into the one of which Mr. Barber had been convicted; and though it was possible to believe that he might have been deceived in one particular case, yet the whole of the cases clearly showed that he must have been a guilty party.

147. He then called the attention of the Court to the two cases in which it was shown that Mr. Barber had appropriated two sums received by him for legacy duty to his own use; and contended that those cases alone were quite sufficient ground for the Court to refuse to restore him to his position as an attorney.
148. In the month of April, 1844, Mr. Barber was convicted of being an accessory before the fact to forgery, and sentenced to be transported for life. If any one could have come at that time to ask that Mr. Barber should be allowed to practise, that application must have been refused; and when upon his pardon and return to this country Mr. Barber applied to this Court to be allowed to take out his certificate, the Court of its own accord directed an inquiry to take place, in order to ascertain whether there were any circumstances in Mr. Barber's professional conduct which rendered it improper that his application should be granted.
149. It was said by his learned friend (Mr. Serjeant Wilkins) that the charges of misconduct now brought forward were stale charges, and the Court would not entertain them. But it must be borne in mind that from the month of April, 1844, when Mr. Barber was convicted, down to the year 1850, when he was pardoned [sic], he was out of this country, and it was only upon his return to England and applying to be allowed to practise the investigation could be set on foot.
150. The first case was that of Robins's executors, which occurred in the year 1842, and that case alone was of itself sufficient to justify the Court in saying that Mr. Barber was a very improper person to be allowed to practise as an officer of this Court. He had entered into a negotiation with Mr. Robins's executor's to recover some money belonging to the testator, on condition that he should have one-sixth of the sum recovered for his own use; and in the agreement which he drew up to conclude the negotiation, he recited as a fact that a Mr. Turrell, of Brighton, was in possession of the information, whereas, in point of fact, he knew that Mr. Turrell was not in possession of it, and in fact knew nothing of the transaction; that was done in order to conceal the name of Fletcher, who was the real informant. He subsequently signed, as attorney for Mr. Turrell, a receipt for the sum of £105, as remuneration for recovering the money, and for his own costs and charges.
151. The next case upon which the master had reported was that of "Guest v. Reynolds," in which Mr. Barber had sworn, in an affidavit made on the 27th of May, 1839 that he had paid two sums to two parties, when, in point of fact, those sums were not paid till the 5th and 7th of June respectively. That was deliberate perjury, for which, if application had been made to the Court at the time, Mr. Barber must have been struck off the rolls.



152. The next case was Steidolf's case, and related to the non-payment by Mr. Barber of certain premiums upon an assurance which had been effected upon Mr. Steidolf's life for the sum of £100. A receipt in the handwriting of Mr. Barber was produced, which purported to be a receipt for a premium which had been paid by Mr. Barber, when, in fact, it turned out that that premium had not been paid, but the money had been applied by Mr. Barber to his own use.
153. It was said by Mr. Barber that he had received Mr. Steidolf's authority to apply that sum to other purposes, but that explanation, he submitted, could not be satisfactory to the Court, when the receipt which was now produced proved the contrary.
154. Those were the cases which the Law Institution, anxious only for the respectability of the profession, had thought it proper to bring before the Court, and, having done that, they would leave the decision of the case to their Lordships, who, they had no doubt, would come to a conclusion which would give satisfaction to the public, and tend to maintain the character of the profession.
155. Mr. BOVILL then followed, and addressed the Court upon the same side.
156. Mr. Serjeant WILKINS (with whom was Mr. Lush) then addressed the Court in support of the application, and repeated his conviction that Mr. Barber was an ill-used and innocent man. He accused the Master of the Court of perverting facts, though not wilfully, in the report which he had laid before the Court, and was several times interrupted and corrected by the Master in the statements which he made in reference to it.
157. The learned serjeant then came to the merits of the case, and, in answer to what had been said as to the effect of the Queen's pardon, read authorities to show that a free pardon not only absolved a man from the penalties which attached to guilt, but made him as it were a new man.
158. But he contended that Mr. Barber was not a guilty man, for his very appearance in this Court was owing to the conviction entertained by Sir George Grey that he was innocent. It had been assumed that the attention of Sir George Grey had been confined to Slack's case, and that if he had been made acquainted with the facts of all the cases, the free pardon would never have been granted. But the assumption was quite gratuitous, for the whole of the transactions were before the Secretary of State before the free pardon was granted.
159. It was also said that if Mr. Barber had not been wilfully blind, his suspicions must have been excited by the circumstances of the different cases. It was an easy thing after events had happened to find fault with a man's want of prudence, but if the Court would view the circumstances as they existed at the time, and not in the light which subsequent events had thrown upon them, it would be found that fraudulent were so mixed up with *bona fide* transactions that it was quite impossible for Mr. Barber to distinguish between them.
160. The whole conduct of Mr. Fletcher showed that he was deceiving Mr. Barber, and making use of him as an unconscious instrument of his crimes, whereas that of Barber showed that he was innocent, for otherwise he would not have made himself so unnecessarily prominent

in doing things which it was not absolutely incumbent on him to do, while the really guilty parties were keeping out of the way.

161. Much stress had been laid on the insertion of Mr. Turrell's name in the agreement without his consent, and though that was not in strictness justifiable, it was one of those things which, from frequent use in the world, had come to be viewed as almost venial.
162. As to the legacy duty, there was not a tittle of evidence to show that a farthing of that money had come into Mr. Barber's hands, nor that the money had not been paid. Neither was it to be believed that he would jeopardise his character for such paltry sums. It had been suggested that at that time Mr. Barber was in needy circumstances, and that even small sums might then have been acceptable, but the fact was that those transactions took place shortly after he had received into his business a partner, who had brought the sum of £1,200 into the concern.
163. It had been alleged as a circumstance of great suspicion that three different proctors had been employed, but that circumstance did not in reality tell against Mr. Barber, inasmuch as they would not necessarily know the nature of the property. Had three different brokers been employed, the case would have been different, but it was found that the same broker had been employed in all three of the transactions.
164. As to Robins's case, that did not reflect any disgrace upon Mr. Barber's integrity, for, so far from defrauding any one, he had been the means of restoring to the rightful owners the sum of £1,040 which had been passed as unclaimed stock to the account of the Commissioners for the Reduction of the National Debt. That was a perfectly honest transaction, both on the part of Mr. Barber and Mr. Fletcher, though Mr. Smedley, in his affidavit, pretended that he had warned Mr. Barber of the impropriety of it, and that unless he desisted from such transactions in future, he (Mr. Barber) would get into trouble. Yet what did that moralist and censor (Mr. Smedley) do? He asked Mr. Barber to become instrumental in obtaining money in a similar way for him, thus holding the book of censure in one hand, and at the same time shaking the purse of bribery and corruption in the other.
165. The learned serjeant then proceeded to show that much of the argument relied upon by the other side was without foundation, and commented minutely upon the facts in support of this view, and was about to enter upon defects connected with Slack's case, when
166. Mr. Justice PATTESON said, probably that would be a convenient point at which to break off for today, and the learned serjeant might conclude his argument in the morning.
167. The Court thereupon rose, at about 4 o'clock.

## **10 May 1850<sup>106</sup>**

168. Mr. Serjeant WILKINS this morning resumed his argument in this case. He commenced by commenting minutely upon the various circumstances involved in Slack's case, which, it will be remembered, related to the forgery of a will; and argued that if Mr. Barber had consulted

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<sup>106</sup> *The Times* (1850) 'Court of Queen's Bench, Westminster' 11 May.

his own interest as a solicitor, it would have been more advantageous to him to have prosecuted the matter in the interest of the real Miss Slack than of the party who personated that character.

169. Besides that, it was sworn by Mr. Barber in his affidavit that he was absent from town during the greater portion of the time when the transaction was being conducted, and that the most important parts of it were conducted by his partner, Mr. Bircham, so that that if blame attached to either, it attached in at least an equal degree to Mr. Bircham. In proof of that allegation the learned serjeant read extracts from Mr. Bircham's diary, which had been sworn to by Mr. Barber, and not contradicted by Mr. Bircham.
170. In fact, only a few days before Mr. Barber's trial took place Mr. Bircham had caused a letter to be inserted in *The Times*, in which he declared that Mr. Barber was as honourable a man as ever lived, and that if Mr. Barber was guilty he also was so. Yet he was not to be found at the trial, though every effort was made to get him into the witness box by the friends of Mr. Barber, who endeavoured in all directions to find him.
171. The learned serjeant then went minutely into the facts of Slack's case, which we do not think it necessary to repeat, as they have been so often before the public, and contended that the applicant's apparent complicity in the guilt of the transaction arose from the deception which had been so ingeniously practised upon him by Fletcher and the other parties to the fraud.
172. The learned serjeant then made some further remarks upon Robins's case, to which he adverted yesterday; and, alluding to an expression made use of by Sir F. Thesiger, trusted that the period from Mr. Barber's conviction to his pardon would not be regarded by the Court as a blank. Mr. Barber's life during his absence from this country was anything but that which would justify the belief that he was a criminal. During those weary years he had been tried as gold in the furnace. In the midst of circumstances calculated to call forth all the bad passions and suppress the virtues of his nature, the former had been kept in constant control by the latter. He had been sustained throughout by his consciousness of innocence and his hope that He on whom he relied, who was the Judge of the Judges and the King of Kings, would yet make that innocence apparent. None in that Court had suffered one-tenth of the pain which Mr. Barber had endured for the last six years; and the fact that he was there this day, after all his sufferings, and with such testimonials to his conduct, was alone sufficient to show that he deserved to succeed in his present application.
173. The learned serjeant then referred to the case of "Guest v. Reynolds," In which Mr. Barber was accused of having falsely sworn that he had made certain payments, and the learned serjeant explained that part of Mr. Barber's conduct by showing the Court that two days before he made the affidavit he had requested Steidolf to pay the money, and that he had reason to believe that that had in fact been done.
174. As to Steidolf's statement about the premiums of insurance, the learned serjeant contended that it was not to be believed, especially when it was borne in mind that not one of Mr. Barber's letters to Mr. Steidolf had been produced, and that the parties had been on good terms with each other, notwithstanding the fraud which it was now alleged Mr. Barber had committed.

175. In further confirmation of this view of the case the learned serjeant dwelt upon the statement of accounts between the parties, which, on his return to this country Mr. Barber had accidentally discovered in a hatter's shop in Bond-street.
176. In closing his argument, the learned serjeant said he should now leave the case in their Lordships' hands, satisfied that justice would be done. He had conducted the case with all the earnestness which he possessed, and without any other reward than the consciousness that he had been endeavouring to do justice to a deeply-injured man. By industry and perseverance he had attained some position in his profession; but though he cared not for the higher honours which might stimulate the ambition of some, he felt that if he should but be the instrument of having justice done to one who had been grievously and cruelly wronged, he should thank God for his creation. He appealed to that justice which hurled kings from their thrones when they became oppressors, and brought nations to the dust when they forgot God – which filled the hungry with good things, and sent the rich empty away – to that justice to which all must ultimately appeal, which would decide the fate of the judge and the judged, and which never appeared so godlike as when stretching forth its hand to protect the desolate and oppressed, to redress those who had been injured, and right those who had been wronged.
177. The learned serjeant's address at the close drew forth some applause, which was, however, immediately suppressed.
178. Mr. LUSH then briefly followed on the same side, and recapitulated the facts of the case.
179. The COURT took time to consider the various papers and documents which had been put in before coming to a decision.

[ends]

## Appendix 50 Judgment in Practising Certificate application 6 July 1850

### *Re Barber* (1850) 15 Law Times 500

*Saturday, July 6.*

*Re Barber*

Attorney-Circumstances under which the Court will refuse to grant renewal of certificate

#### JUDGMENT.

PATTESON, J. –

1. The applicant in this case, Mr. Barber, having for some years practised as an attorney, ceased to take out his certificate for more than a year, and subsequently came to the Court under the provisions of the 25th section of the statute of the 6 & 7 Vict. c. 73, for leave to renew his certificate, under very peculiar circumstances. At the Central Criminal Court, in April 1844, four bills of indictment were found against him and other persons, one of the name of Fletcher, upon four separate charges of forgery. Upon one he was tried and acquitted; upon another he was tried and convicted, and sentenced to transportation for life. He was not tried upon the other two.
2. He was actually transported to Norfolk Island, and there underwent great hardships, which he bore with great fortitude. On the 12th of November, 1846, he received her Majesty's pardon, on condition of not returning to the United Kingdom. On the 10th of November, 1848, her Majesty was pleased to grant him a free pardon. On the 31st of January, 1849, he made his application to this Court that the Law Society, acting as registrar under the statute 6 & 7 Vict. c. 73, might be directed to grant him the usual certificate to practise as an attorney. This application was opposed by the Law Society, and the Court directed a reference to the Master.
3. The Master was attended by all parties, and after a very long inquiry, made his report, which being read to the Court, a rule *nisi* was granted for the renewal of Mr. Barber's certificate, and that rule has been argued before my brothers Coleridge, Wightman and myself for several days, and fully and ably discussed.
4. One question is, upon what principle we are to proceed in deciding this rule; whether we are to confine ourselves to the immediate reasons for Mr. Barber's omitting to take out his certificate, that is to say, the conviction and the other charges of forgery, and to his conduct during the discontinuance of practising; whether we ought to take into consideration other matters of conduct of Mr. Barber unconnected with those charges, but which were brought before the Master on the hearing.
5. It is contended that the rule of court of Easter Term, 1846, which recites, "That it is expedient that on an application of an attorney having neglected, for the space of one whole year, to procure or to renew an annual stamp certificate, the judges should have the means of inquiring as to the circumstances under which he has omitted to commence or has discontinued to practise, and as to his conduct and employment during the term of such omission or discontinuance," and which directs that he shall give a Term's notice of his

intended application, confines the Court and limits the present inquiry into the circumstances under which Mr. Barber discontinued to practise, and to his conduct and employment during the term of such discontinuance.

6. We are clearly of opinion that the inquiry is not to be so confined and limited. The rule of Court recites the object of requiring a Term's notice in the ordinary cases of neglect to take out the annual certificate in general terms, and the matters which it states to be expedient that the judges should have the means of inquiring into are such as are applicable to and necessary in all case[s] of application to renew; but it was not intended to confine the matters to be inquired into in peculiar and extraordinary cases, or to limit the general jurisdiction which the Court has to inquire into the conduct of those who seek to act and practise as its officers, and especially as attorneys, whether that conduct comes before us on motion to strike an attorney off the roll, or to restore one already off the roll, or to allow the renewal of a certificate, or on motion to answer matters of affidavit by any of complaint.
7. In all these cases we have not only the power, but it is our bounden duty, to enter fully into every part of the conduct of the officer which can be fairly considered to bear upon the question at issue, making, undoubtedly all due allowance in respect of any difficulties to which he may be put by lapse of time or loss of papers, or books, or any other circumstance, and taking care that he shall suffer nothing from prejudice, but taking all care also for the interests of the public, and the honour of the Court involved in them, that the inquiry shall be full, effective, and searching. We hold, therefore, that we are bound to look into all the matters which in this case have been brought before the Master. We think he was quite right in so understanding the rule under which he acted, and we feel bound to say in the commencement and without prejudice to our ultimate decision, notwithstanding some severe observations which have been made in the course of the discussion, that he has investigated the evidence with great care and attention, and with entire candour and impartiality.
8. The next question is, what is the effect of the pardon by the Crown in this case? It is laid down in the case of *Cuddington v. Williams*, in Hobart's Reports, p81, "that the king's pardon doth not only clear the offence itself, but all the dependencies, penalties, and disabilities incident unto it." And in Hawkin's Pleas of the Crown, book 2, c. 37, s. 48, citing *Crosby's* case, from Skinner, 578, by Holt, C.J. "The pardon makes him as it were a new man, and gives him a new capacity and credit." The authorities on this subject are collected and commented on by Mr. Hargrave in the second volume of his Judicial Arguments, p .221, and following passages. The result of them is, that the pardon has released Mr. Barber from all consequences attaching or incident to the conviction; that although the evidence given on his trial justified the verdict that was found, he is to be treated as not guilty of the particular offence of which he was convicted, as much as if a verdict of not guilty had been pronounced.
9. As it was on the first of the cases on which he was tried, to give a less effect than this to the pardon of the Crown would, as it appears to us, be contrary to the authority to which we have alluded, and would be in truth taking upon ourselves to question the propriety of the exercise of an undoubted prerogative of the Crown, and to abridge the benefit which the Crown has thought fit to confer.

10. But further than this, we do not feel ourselves justified in going, and when Mr. Barber makes this application to be allowed to practise as an attorney, we consider ourselves bound to examine the facts relating to the case on which he was tried and acquitted, and to that on which he was found guilty and pardoned, and to those on which he was indicted but not tried, in order to ascertain whether[,] admitting them not to shew him guilty of the charges contained in the indictment, they are of such a culpable character as to shew him to be a person unfit to be entitled to be entrusted with the responsible duty of an attorney of this Court, both with regard to the interest of persons who might become his clients, and for those with whom he might have to transact business, or whether the facts are of such [501] a character as to induce a reasonable belief that he may have been deceived by Fletcher, and made the unconscious instrument of fraud in those transactions in which he was engaged with him, and with regard to other transactions in which Fletcher did not participate, may have acted inadvertently or negligently, but not culpably.
11. We will begin with the cases which, on the investigation before the Master, and in the course of the argument, were called mal-practice cases: of those, Dommett's case, Fenner's case, and Gough's case were very properly abandoned on the argument. Another of these, the case of Robins, appears more important as connecting Mr. Barber personally with the traffic carried on by Fletcher, than as affording any sufficient ground, in itself, for refusing him his certificate.
12. Mr. Barber in that case took an active part in negotiating a sale of valuable information to Robins's executor, and in an agreement which he prepared with them, he represented one Turrell as the person who possessed the information, and to whom the reward was to be paid, and he signed the agreement in Turrell's name; whereas, in fact, Turrell had nothing to do with it, nor knew anything about it; and his name was inserted without his knowledge, the real person being Fletcher, he gave the information and was to receive the reward, but whose name, for reasons which are not at all satisfactory, Mr. Barber thought fit to conceal.
13. This dealing, though false and underhanded, had nothing strictly fraudulent in it; but it shows that neither Fletcher nor Mr. Barber were dealing openly and candidly, and strengthens the distrust that may be entertained of Mr. Barber being a mere blind unconscious instrument in the hand of Fletcher, his own conduct being always candid and straightforward, and all the falsehood that of Fletcher, who deceived him, as much as anybody else, or, indeed, rather more.
14. The case of *Guest v. Reynolds* involves a charge, if not of perjury, at least of very reckless and careless swearing, as to the affidavit of increase in an action. Mr. Barber had certainly written to one Stidolph, with whom he had an account and correspondence, and who lived at Tonbridge [sic] Wells, to pay for him certain monies to witnesses in the case; and presuming Stidolph had so done, he made an affidavit that he had paid the witnesses the specified sums. Stidolph had not paid them, nor had he informed Mr. Barber that he had so done, so that the latter was not deceived as to the fact, but took it for granted that his directions had been complied with, though he had not sent the money, nor had any sufficient reason to believe that Stidolph would pay them.

15. The affidavit was not true. We should be very sorry if anything which falls from us in this case could be construed into anything like a vindication, or even palliation, of such conduct. This much, however, we are in justice bound to say, that Mr. Barber's assertion that he really expected the money had been paid, and was not guilty of any fraud or wilful falsehood, is consistent with the facts. The matter was afterwards investigated by Master Bunce, he was satisfied that the affidavit had been made under a *bona fide* supposition that the monies had been paid.
16. We have great reason to fear that affidavits founded on similar presumptions have too often been made, and are most desirous to put an end to such practices, which we trust to be enabled to do. This affidavit, however, was sworn in 1839, and made the subject of inquiry at the time, and explained to the satisfaction of the Master. The matter was apparently at an end, and it is hardly right that it should be brought forward again at this distance of time, when an inquiry arising out of wholly different matters had taken place. It would be far otherwise if the question of this affidavit and its contents had been concealed or suppressed, or had been unknown, so that no opportunity of investigating the matter had been afforded; it was investigated at the time, and not made the subject of accusation, and we think that it ought not to weigh now.
17. It was difficult to deal with the other instance of alleged misconduct in Stidolph's case. The accounts and dealings between Mr. Barber and him seemed, by the affidavits on both sides, to have been very complicated, and not always of a very creditable nature as respects either party. Undoubtedly Mr. Barber does not satisfactorily account for his conduct respecting the premiums of insurance, but says that the receipt of the 26th of May was given upon a promise of Stidolph's to remit the money, which he failed to do, and that it was intended to answer some purpose of Stidolph's, which he did not explain.
18. Mr. Barber acted as agent for the insurance company, and accounted to them down to the end of 1837, but after that time he seems never to have accounted to them at all, or to have been considered by them as their agent; but it was urged that this does not relate to Mr. Barber in his character of attorney, and we are not disposed to think that these transactions with Stidolph would, under all the circumstances attending them, be themselves a sufficient ground for refusing his certificate.
19. We now come to what were called the forgery cases, and, first, of Stewart's case, on which he was acquitted. The indictment in this case charged Fletcher, Barber, and Georgiana Dorey with feloniously inciting one Susannah Richards to forge an administration-bond. The bond bears date and was executed on the 31st of July, 1849, by Susannah Richards by the false name of Elizabeth Stewart, she pretending to be the sister of John Stewart, of Great Marlow, who had died in 1827 possessed of certain Long Annuities, which had been transferred in the year 1836 to the Commissioners for the Reduction of the National Debt. It is clear that Fletcher had instigated Susannah Richards, with the help of her daughter Georgiana Dorey, to commit this fraud and forgery, and they were convicted.
20. Mr. Barber, who acted as the attorney for the pretended Elizabeth Stewart, in great part of the transaction, was acquitted. That he was rightly so, does not seem doubtful; because all the evidence in the case showed that he was introduced into the transaction after the



execution of the bond (the charge against him being that he had instigated the forging this bond), therefore that he could not have been accessory before the fact, with the exception of the evidence of Henry Hyatt, who swore to his having gone down to Marlow and made inquiry respecting John Stewart, two or three weeks after Fletcher had been there making similar inquiries under the false name of Jones.

21. Fletcher certainly went there some time in the month of May, 1840, and if Hyatt was correct as to the interval of time between Fletcher's going and Mr. Barber's going, Mr. Barber would be introduced into this transaction before the execution of the bond. But Hyatt was contradicted as to the time by his own bill for refreshments at his house, and for a gig to take Mr. Barber to the railway on the occasion of his visit to Marlow, which bill was dated 13th of October, 1840, and it is not pretended that Mr. Barber went more than once. He is also contradicted by the evidence of Mr. Barber's clerk, as to the time of the visit, and as to his not being absent from London in May or June for one day, except at Rochester.
22. Hyatt told Mr. Barber at Marlow, that he was coming up to town very shortly, and promised to call on him at Nelson-square. He did come up, and did call there, and saw Mr. Barber; but it is singular he was not asked the time of his so calling, nor was any evidence given to fix it. Mr. Barber's diary shows it to have been on the 13th of October that he was at Marlow; the entry appears to have been made in the regular order of time, and no suspicion in the course of the argument was thrown on the genuineness of this entry. There seems therefore, good reason for believing that Hyatt was mistaken as to the time, and that Mr. Barber was not introduced into this transaction till after the bond was executed, and when difficulties arose as to the affidavits, raised by the officer at Doctors' Commons in August, upon which Fletcher told Mr. Potts, the proctor, that he would send his solicitor, Mr. Barber, to him.
23. It was on the 25th of August, according to the diary of Mr. Barber, he was first introduced, and at the earliest on the 13th of August, that Fletcher said he would send him. Soon after Fletcher had applied to Mr. Barber the latter appears to have been introduced to the pretended Elizabeth Stewart, and to have produced to Mr. Potts's clerk, Keen, written instructions from her, stating that she was informed of her brother's death through the kindness of a friend of her late aunt, who resided at New York, and with whom Elizabeth Stewart came over from America to Bristol in May, 1840, of the name of Jones, and he promised her to go to Marlow and see her brother and to take a letter from him to her; that Jones did so, and on his return told her her brother had died in 1827; that Jones had gone back to America and she had not seen him since; that her late aunt had told her her brother had about £700 in the sinking fund in the Bank of England.
24. Mr. Barber might innocently believe this statement. Mr. Barber also produced to Keen two certificates from Marylebone parish of the baptism of John Stewart, son of Robert, in June, of the parish of Marylebone, of the 26th of April, 1761, born on the 17th of April the same year, and of Elizabeth Stewart, daughter of the same parents, of the 15th of May, 1763, born April the 22nd. It does not appear who procured these certificates, but it is not surmised that they are not genuine.
25. Now, as Mr. Barber had not then been to Marlow he might be wholly ignorant that John Stewart was a Scotchman, and believe them to apply to him, and the pretended Elizabeth

Stewart. Afterwards, on the 7th of September, Mr. Barber applied by letter to Mr. Strode, the master of the deceased John Stewart, on behalf of Mrs. Stewart, as the administratrix of her late brother John, for stock receipts and other papers. Mr. Strode, by letter, referred him to Pickering, Smith, and Thompson, of Lincoln's-inn, and in consequence Mr. Barber called on Mr. Thompson on the 19th and 24th of September, and had conversations with him and his clerk, Mr. Bezant; and Mr. Barber stated administration had been granted, and that there was an affidavit and certificate.

26. They were not satisfied, and asked to see a copy of the affidavit and the certificate, and also to see the sister, but he said she was too infirm and could not come; that she had lately come from America. On the second occasion he produced a copy of the affidavit, but not the certificate. Bezant wrote down on paper what information he required, namely, where the deceased was born; where he went to school; some explanation why the sister sent a letter to him at Marlow by a stranger instead of going herself, and wished to see the certificate and the sister.
27. Mr. Barber, however, did not comply with these requests, and they never saw him any more. Here is the first conduct of Mr. Barber which indicates any suspicion that he must have doubted the truth of Fletcher's and the pretended Elizabeth Stewart's story; and if he did not, why did he not produce the certificate, and why not suffer Bezant to go and see the supposed sister, or, at all events, obtain from her answers to Bezant's queries?
28. Mr. Barber, then, on the 13th of October, goes down to Marlow; there he must have learned that the deceased was considered to be a Scotchman, and that no one had heard him speak of a sister. If Hyatt be correct in his evidence, Mr. Barber then spoke of Jones (the name assumed by Fletcher) as being "all one," or "of the same firm with himself;" and he gave a false name himself, that is "Clarence Peckham, esq." but with his true address, "Nelson-square." Mr. Barber denies that he used the expression "or one," or "of the same firm," and whether Hyatt is accurate or not as to the date of the journey to Marlow, we think that from the distance of time, and from his occupation as an innkeeper, through which he would be in daily intercourse with strangers, it would be unsafe to rely on his accuracy as to the particular expressions said to have been used nearly four years before he gave his evidence.
29. Mr. Barber says he knew that Jones had been there with the letters from the pretended Elizabeth Stewart, and had ascertained the death of John Stewart; and that he knew nothing of Fletcher having passed himself off as Jones. If he believed the instructions in writing taken from the pretended Elizabeth Stewart, it may be that this explanation is the truth.
30. He denies altogether giving a false name. He said he gave his name and address, and added, if he was not there Hyatt would ask for his clerk Peckham (and he had a clerk then of the name of Peckham), and supposed Hyatt blundered and converted this into "Clarence Peckham, esq." As he gave his address, and as it appears that his name was on a brass plate on the door in Nelson-square, it is difficult to see what object he could have in giving a false name.
31. He returned to London, and on the 31st of October made an application by letter to Pickering and Co for wages which he alleged were due from Mr. Strode, their client, to the

deceased John Stewart. On the 2nd of November they answered, and desired to know who his client was; if it be the alleged sister, that they are not satisfied she is such.

32. On the 4th of November he writes and urges that the administration had been granted after every query answered; that the bank director had ordered a transfer of the stock; and that she was truly entitled. On the 6th they answered that they are not satisfied; that they should be glad to have answers to the queries which he had required them to put into writing. He did not follow up the demand, because he says it was too small to be worth the expense of extra costs.
33. In the mean time, Fletcher had written letters in Elizabeth Stewart's name to Duncan M'Pherson, session clerk, Callander, Perthshire, for a certificate of marriage of Robert and Jane Stewart in 1751; and in one of them he had enclosed a post office order for £2 and had requested to have the name of Janette changed into Jane, because Janette in Scotland was Jane in England.
34. The last letter he wrote was on the 9th of October 1840. M'Pherson, on the 7th of October, two days before that last letter, sent the certificate of Robert and Janette Stewart, but refused to alter the name.
35. This letter was found in Mr. Barber's office after his apprehension, and leads to the inference that Mr. Barber knew that there had been attempts to tamper with the Scotch certificate, in order to make it agree with the baptismal certificate in Marylebone parish.
36. The stock was transferred afterwards, namely, on the 22nd of October.
37. Now, looking at these transactions particularly with reference to the dates, the only circumstances which attach suspicion to Mr. Barber's conduct are, his omission to give full information to Pickering and Co and the letter of Duncan M'Pherson found at his office. Doubtless the circumstances are suspicious, but they are no more. The omission to furnish further information to Pickering and Co may well have arisen from the orders of his client, or from a fear, however unfounded, of trusting those gentlemen with the means of resisting what he might believe to be a just claim. The letter from M'Pherson was in answer to an application with which he is not connected, made before he went down to Marlow; and although we entirely think that an attorney, on finding that his client had made any attempt whatever to tamper with evidence, ought at once to have refused to continue to act for her, yet, in the absence of any direct proof when that letter was brought to his notice, if at all, we do not feel that we can in fairness to him say that he is shown to have connived at or assisted [502] in such tampering.
38. At the same time we cannot but see that the circumstances of this case were of such a nature that it is scarcely possible to believe but that they must have opened the eyes of a person so shrewd and intelligent as Mr. Barber is described to have been, and undoubtedly was, to the true character of Fletcher's dealings, and to the unscrupulous manner in which he was willing to carry them on, and should have made him more particularly careful on future occasions.

39. The only remaining circumstance is, that Mr. Barber did not pay the legacy duty, although it is sworn that money was given to him for that purpose. He is applied to by Griffin, the surety in the bond, to do so, and he writes to him that he will see to it; but he does not. Mr. Barber says he is unable to explain this for want of his papers. He evidently was a stranger to Griffin, who was hired by Fletcher and Dorey to make a false affidavit. Even if he wilfully kept back the money through any pecuniary pressure, or other such motive, at the time, such conduct, slender by itself, would only subject him to an application to the Court to pay it over, but not to a motion to strike him off the Rolls for fraud and professional malpractice.
40. There are two other charges of forgery against Barber, intermediate between Stewart's case and that of Slack, which it may be proper to consider next, as the time at which these various transactions occurred with reference to each other is by no means an unimportant circumstance.
41. One of these charges is that in the case of Burchard, in 1841, and the other that of Hunt, in May 1842. Bills were found against Mr. Barber and others in both these cases, but as Slack's case, in which Mr. Barber with others was convicted, was tried, they were not proceeded with.
42. The cases of Burchard, Hunt, and Slack resemble each other in several of the most material circumstances. In each of them, the person whose will was in question appeared to know the amount and description of the stock he or she possessed, as it is specifically mentioned in each will, and yet had for many years omitted to receive the dividend, although it would seem, as far as we can judge from the facts and circumstances before us, that the rest of the property, independent of the stock, was so inconsiderable, that the omission to receive the dividends appears very extraordinary.
43. In the case of Burchard, the pretended devisee and executrix was introduced by Fletcher to Mr. Barber, to do what was requisite to enable her to prove the will. The will appeared to be dated in October 1825, and by it the testatrix bequeathed two specific quantities of stock then standing in her name to her niece, the devisee and executrix, who was described as then living with her. The testatrix was represented to have died on the 21st of March, 1841, and was represented not to have received her dividends for fifteen or sixteen years, and in consequence the stock had in 1834, several years before her death, been transferred to the Commissioners for the Reduction of the National Debt. It did not appear that the testatrix had any other property beyond the stock and the arrears of dividends, nor does it appear that Mr. Barber made any inquiry or required any explanation to account for the non-receipt of the dividends for so long a period.
44. In the other of these cases, that of Hunt, a person named Sanders was introduced in May, 1842, by Fletcher to Mr. Barber under the name of Hunt, as a grandson, legatee, and executrix [sic] of the will of Mary Hunt, dated in 1829, and who died in 1829. The will, as in the other case, specified an amount of stock of which she was possessed, and the application to Mr. Barber was to take the necessary steps to enable Hunt to prove the will and obtain the stock, and any arrear of dividends at the bank. it appeared that no dividends had been received by the testatrix since 1806 (she having died in 1829), and the reason assigned for

the will not having been proved before was, that the grandson and legatee had been at sea, and had only returned lately, and upon his return had found his grandmother's will.

45. It does not appear that Mr. Barber took any means to satisfy himself how it happened that Mary Hunt, who did not appear to have had any other property than the stock, omitted to receive the dividends for twenty-three years, nor what had become of the will during the thirteen years that the grandson was absent. He did, however, advise that someone should make a declaration of the identity of the grandson; and, accordingly, one Mary Howard was produced by the pretended Hunt to make it, and she did so. But it does not appear that Mr. Barber took any measures to satisfy himself of the trustworthiness of Mary Howard.
46. As, [sic] in the other case, the will was formally proved through the agency of Mr. Barber, and the pretended grandson received the stock and the arrears of dividends. In both cases the wills were forgeries and the legatees impostors.
47. It has not been shewn that in either of the cases Mr. Barber personally received more or derived greater benefit than the amount of his professional charges, except, indeed, that it is said in Hunt's case, he received the amount of the legacy duty and omitted to pay it over to the proper officer; this, however, is denied by Mr. Barber, and is by no means clearly made out against him.
48. I now come to the case of Slack, and in considering the case of Slack to which we are now arrived, it is to be borne in mind on the one hand, that Mr. Barber has been found guilty of the charge which was framed upon it, and on the other, that he has subsequently received her Majesty's pardon; that the verdict has not been found fault with even by his counsel as unjustified by the evidence on the trial, and that her Majesty's Secretary of State, after a full investigation of the documents laid before him, has accompanied his intimation with the gracious pleasure of the Queen, with an expression of his own conviction of Mr. Barber's innocence. Such an expression is entitled to the highest consideration with reference to the eminent individual from whom it proceeds, and he must be taken we think, to have had and to have expressed it purely and entirely from a sense that was due to justice.
49. At the same time it is obvious it stands distinct both in quality and in effect from the pardon itself; that its value on the present inquiry is merely personal, and depends in a great measure on the materials which were before the Secretary, and the circumstances under which they were considered. He had not the benefit of a discussion by advocates on each side, and most probably was not supplied with such explanation and counter statements as have been laid before us on the part of those who now oppose Mr. Barber's application.
50. Now, in considering whether a pardon should be recommended on a particular conviction, would it have been right perhaps to allow so much weight to other imputations on the character of Mr. Barber as we may properly give to them, seeing that we are now inquiring whether his conduct has or has not been such that we can properly allow him to resume his practice as an officer of our court?
51. Mr. Barber's first ostensible interference in this case was in October 1842, when he had been for some time connected with Fletcher; and, besides the regular business which an attorney

conducts for his client, had interfered on several occasions in transactions of the irregular kind now under consideration.

52. His first letter, of the 4th of October, speaks of Ann Slack as already deceased; a resident formerly at Chelsea; and as one about whom information might probably be procured from Captain Foskett, by reason of his family having intermarried with some members of her family.
53. The answer to this letter informs him that a Miss Anne Slack, connected by marriage with Captain Foskett, was alive, and ready to be communicated with. But the reply sent by him in the name of his firm, on the 25th of the same month, states that they find an entry of the death of Ann Slack, formerly of Chelsea, at Somerset House, by which it appears that she died at Bath, and that they therefore feel some doubt as to the identity of the lady in question; yet the letter goes on to inquire whether the undoubtedly living Ann Slack formerly resided at Chelsea, and whether she spelt (not *spells*, in the present tense) her Christian name with or without an *e*. The answer to this states that she does spell her name Anne with the *e*, and did reside in Smith-street as much as twelve years before.
54. This is a somewhat remarkable correspondence, - commencing with an inquiry for the representative of a deceased person, answered by information about one living, and followed by a reply from which it might be inferred that new and conclusive proof had been discovered of a person corresponding in name and residence who had died at Bath; still, however, a doubt is suggested whether the undoubted living person be identical with the one supposed to be dead. An inquiry is made as to her residence, and how she spelt her name (this last expression being more strictly applicable to a deceased than a living person), and to these inquiries answers entirely satisfactory are given.
55. But the letter of reply, the third in the series, speaks also of an entry having been found at Somerset House, and this is in October, 1842. Upon the trial it was proved that no such entry was, in fact, to be found there, nor is it now stated from Barber, that from Fletcher, or from any one, he had at that time received information that any such entry was there. On the contrary, his statement would lead to the supposition that the first communication to him respecting Barber [*? sic, Slack*] was made by Fletcher at a much later period, and after it had been concluded that Captain Foskett's sister was not the person they were seeking for.
56. He says, Fletcher, a few days after what is called the disappointment as to Miss Slack, wrote of his intention to go to Bath, having reason to suppose from the death of a lady of that name there, that the owner might be heard of in that quarter (to be found in page 38 of the narrative).
57. Liberal allowances are to be made from the circumstances under which Mr. Barber brings his case now before us, and it is certainly possible that he may have received suggestions from Fletcher which he now forgets, but, after all, he was dealing with Captain Foskett disingenuously; and if it be said that the concealment which his client imposed upon him excused him in that respect, yet that very circumstance we think could not but awaken the caution of an honest and sensible man as to every step in this transaction which was supposed to make such a course of dealing necessary.

58. This part of the transaction ended with a request that Captain Foskett would call on Mr. Barber, when it was stated, "the object of the previous inquiry should be explained," and this led to a very important interview between them in November. According to Mr. Barber's statement, before they met he knew the precise nature and amount of the property in question, "£3,500 stock in the name of Ann Slack, of Smith-street, Chelsea," and his instructions were to ascertain if Mrs. Foskett's sister was the party, and if so, whether she was aware of her rights; but on no account to disclose the nature of her property.
59. In his communications he had before treated the owner of the property as a person deceased, and the living Ann Slack, if any, as that of her representative and legatee. At this interview his inquiries, however, are as to her own property, whether landed or funded? whether large or not? in her own management or otherwise? whether she had received all that was due to her? whether she had executed a power of attorney at any time? whether she was a person much interested about money matters? what was her age?
60. All of these questions were calculated to elicit information used for good or evil purposes, on the supposition that the property in question was already her own, and vested in her own name and title, but wholly useless if it was to be derived to her anew from any other source. But he also communicated information that probably the person had left her a very considerable sum, - it might be £10,000; that the person had died at Bath within a very few weeks, and Miss Slack might be early in possession; but there was a kind of doubt.
61. The interview was evidently of considerable duration, for it wearied out the patience of Mrs. Foskett, who was waiting in the street. She came in to interrupt it, and during her stay communicated the additional and important information that a Mr. Hume had been Miss Slack's trustee, and managed her affairs till his death.
62. We may not find it very difficult to understand how Captain Foskett, evidently unacquainted with business, should fail to be struck with the inconsistency of the questions asked of him with the information conveyed; but it must have been obvious to Mr. Barber, if the owner of the property was a lady who had died within a few weeks, from whom, by bequest or intestacy, it was to come to Miss Slack, or of what importance was it to know Miss Slack's present property, how managed, and whether she had received all that was due to her.
63. It is impossible not to see, on the admitted state of Mr. Barber's knowledge at the time, that on the one hand he was extracting information on the supposition that Miss Slack might be the owner of that property which stood in the name of a person agreeing in name and residence, and, on the other, misleading Captain Foskett by pure inventions; for, even conceding that he believed from other information what he had confidently, though untruly, asserted as to the entry at Somerset House, yet there is no trace to be found, and at this time no statement has been made to him of a will being in existence by which Miss Slack could be benefited; and, as to the intestacy, he must have known whatever affected her would equally have affected her sister also.
64. Finally, on parting, he requests Captain Foskett not to pursue the inquiry in any other channel than his own.

65. Now we are constrained to ask, did the course of conduct pursued by Mr. Barber in this interview originate with himself, or was it suggested by Fletcher? If he knew the falsehood of many of the facts which are asserted or suggested, and their irrelevancy with candour and good faith, that course was not reconcilable with candour and good faith; if he would not assist, he had no right to mislead the party with whom he was dealing, almost, if not altogether, in relation of attorney and client.
66. If he did not know, but was acting on the instructions of Fletcher, were not these instructions such in their nature as should have aroused caution and inquiry both as to him and the nature of the matter in hand?
67. We have noticed that one of his inquiries at this interview related to the age of Miss Slack, and it is safer on the evidence to assume as a fact, that the answer to it was that which has been stated as incorrect in such a sense as to create a serious difficulty in the way of supposing her to be the owner of the stock in question.
68. Upon this circumstance the greatest reliance is placed by Mr. Barber; in truth, coupled with his confidence in Fletcher (for which, to the extent to which he carries it, we see no sufficient reason), it is the main ground on which his defence rests.
69. It is a little remarkable, however, that even upon this point what he stated to Captain Foscett would go to mislead him. He said, "forty will do." Now, he was speaking in 1842 with reference in his own mind to a power which must have been executed by a person of twenty-one years of age in 1829, thirteen years before. Instead of forty, therefore, thirty-four would have done; but considering that he had name and residence agreeing, and the fact of the trustee and his name and his death, it seems very strange that where the difficulty of the age arose, he rested on so very superficial an inquiry and so vague answer. There was no danger in pressing the question, and when so much turned on the [503] answer, it would have been fair in any case, and particularly so in such a matter as this, to let the party to whom the question was put be aware of the importance of the accuracy of the answer; at all events, it was strangely unreasonable to draw any strong conclusion from the answer to a question so put, that Captain Foscett might not unnaturally think it merely unimportant or even impertinent. We have said that there was no danger from pressing the question, for there was no danger of any fraud being successfully introduced into this answer.
70. The next step in the transaction is the procurement of Miss Slack's handwriting. Now, at this time Mr. Barber had stated that an entry had been found of the death, at Bath, of *a* Ann Slack, formerly of Chelsea, and he could not doubt that when he spoke to Captain Foscett of the lady who had died at Bath within a few weeks, from whom the expected property was to come, that gentleman would understand him to refer to this Ann Slack.
71. Mr. Barber must either have made this story, and known it to be false, or it must have been suggested to him by Fletcher. It is unnecessary to point to the conclusion on the former supposition, but on the latter, when, as he says, Mr. Fletcher desired him to procure Miss Slack's signature, what object could he suppose to have been in view? If the owner of the stock were really dead, or if he believed that Miss Slack's youth made it impossible she should



be the owner, no useful purpose, consistent with honesty, could be answered; and no man of the world, with ordinary sense, certainly no London attorney with the most moderate experience, could fail to know that to place the signature in the hands of a third person under such circumstances as those which even then surrounded this case, within Mr. Barber's knowledge, was, to say the least of it, a most imprudent and reprehensible act.

72. What followed must have been foreseen. It is speedily announced to Captain Foskett's attorney that the signature does not correspond with that to which it was to be compared, and Miss Slack's claim is as quickly laid aside, with the assurance, however, that "when a subsequent claimant shall be discovered, the result shall be communicated for the satisfaction of the young lady and her friends," a promise which does not appear to have been kept.
73. It may seem to weaken our remarks as to the impropriety of placing the signature in Fletcher's hands, that Mr. Baxter, the professional adviser of Captain Foskett, should have consented to its being placed in Mr. Barber's hands; but the circumstances were different. Mr. Baxter knew nothing that should arouse his suspicions, and the confidence which exists between apparently respectable members of the Profession in each other would effectually prevent its being awakened. It will be said that the same, or even greater, confidence may well have existed in the breast of Mr. Barber towards Fletcher, and this is a point on which great stress has been laid both by himself in his narrative and by his counsel in the argument. Much has been said in general terms of the affluent circumstances, the respectable employment, and the imposing demeanor [sic] of Fletcher; but when facts are looked to we see nothing in the length or closeness of their connection in the circumstances of Fletcher as disclosed in his letters, or in the sort of business which he was from time to time bringing to Mr. Barber's office, to disarm the caution of a scrupulous or sensible attorney, least of all were transactions such as these calculated to induce unbounded confidence in the honour and integrity of the client.
74. To put it most favourably for Mr. Barber, he must have known that the business originated in a way that could not be disclosed, and could not be carried on without a series of deceptions and concealments.
75. We think, then, that even if Mr. Barber had persuaded himself that he might, without loss of respectability, engage in such transactions, he could scarcely help feeling that his client was that sort of person in dealing with whom it would be wise to proceed with caution rather than with unbounded confidence.
76. And now the means of forgery having been obtained through Barber's application for the signature, after a convenient interval, the will and the sole legatee and executrix are produced to Mr. Barber.
77. He is apprised on the 15<sup>th</sup> of March, 1843, of the "undoubted discovery" of the person, that a fac-simile of the signature to the will has been procured and compared with that in the bank books. The contents of the will have been ascertained, and the legatee knows all her rights, as the stock is mentioned in the will.

78. When the executrix appears she [sic?] finds the testatrix had died in February, 1843, several months after he had represented to Captain Foskett that the owner of the property to be looked for was dead.
79. But the will itself was most calculated to excite attention and inquiry. It named the stock in question precisely, and it named no other property. It was dated June 3rd, 1842. How had it happened that an owner, knowing that she was the owner of this specific property, and so far as appeared knowing of no other, and having none other to subsist on, had not received any dividends for so many years, that the stock had been transferred to the Commissioners for the Reduction of the National Debt?
80. None of these circumstances, however, seem to have created the slightest difficulty with Mr. Barber.
81. No inquiry is instituted; not a question asked of the least importance. The last circumstance was noticed, in the course of the argument, from the Bench, and after a long interval of time to consider it no other answer or explanation suggested itself to the learned counsel for Mr. Barber than that it had never been observed on before, the case had been under the consideration of so many acute lawyers, and that what had escaped them, however obvious and important it might seem when noticed, might equally have escaped Mr. Barber, so that no hard inference ought to be drawn from his omission.
82. This is an answer not unworthy of consideration, certainly; still it must be remembered that the question is not how the eminent lawyers alluded to, under the circumstances in which they were placed, failed to notice the remarkable fact, but how Mr. Barber could help being struck with it, considering the circumstances under which the will was first placed before him, from the facts which had gone before within his own knowledge, with the information he had acquired.
83. To him the idea was familiar, and the property for years unclaimed, either because the owner had been long dead, or, if alive, had not been conscious of its existence. He had been engaged, if his story be true, in searching out for the owner. He had rejected one claimant at least, with many circumstances in her favour; and if it were desired to place before him a claimant under the most unpromising and suspicious aspect it would have been, as we should have thought, one who came with the will in her hand, saying, "I am the sole legatee of my aunt, who made this will a few months since, who knew of the existence of this property a few months since, who died a few months since, who does not appear to have known of any other property, and who has bequeathed it to me without a syllable of explanation whether she has made any effort to recover it or not, and if not why not."
84. We cannot but suppose that if Mr. Barber had paused an instant, - if he had put one question to Fletcher, his narrative would have informed us of the fact, and we should have had a detail of the acts by which his doubts were removed. Nothing of the kind is mentioned, and we are driven to the conclusion that the fictitious Anne Slack was at once accepted, and all the formal and ordinary measures taken for putting her in possession of the property. It seems to us needless to dwell on these measures. They have no real weight in the present inquiry. It was to be expected that Mr. Barber, whether innocent or guilty, would interfere

in them much as he did. For the most part, they were matters of formal detail. Fletcher, who was, no doubt, the immediate communicant with Christmas, the bank clerk, might have reason for avoiding personal interference; but no suspicion would attach on Mr. Barber, a respectable attorney, by reason of personal services rendered to a familiar client, a stranger to proceedings of this kind. If he were guilty, he needed not to have shrunk from them. If he were innocent, they were matters very much of course.

85. The interview with Mr. Freshfield, after the forgery was discovered, cannot be wholly passed over in considering the character which ought, in justice, to be assigned to Mr. Barber previous. It is said that Mr. Freshfield was imperious and irritating in his manner, and that Mr. Barber felt bound, in honour, to protect his client Fletcher.
86. It is not very easy to feel the weight of this latter motive. If Fletcher were believed to be innocent, disclosure need not have been feared. If guilty, there could be no point of honour to protect him; but after making every allowance for these motives, which might operate more strongly on Mr. Barber's mind than seems reasonable to us, there are statements in Mr. Freshfield's evidence very difficult to reconcile with the entire innocence which is now asserted, and we are led to place the more reliance on the evidence because the witness very properly committed the statement to paper immediately after the conversation had taken place. We have reason, therefore, to rely on its accuracy.
87. We have passed over, as immaterial to our inquiry, many of the numerous details of this transaction, but again and again these have been appealed to on Mr. Barber's behalf, and it has been asked why, except on the supposition of his innocence, and that he was a person necessary to be deceived, did Fletcher resort to so many laborious contrivances?
88. The question is surely very easily answered. If Mr. Barber were an honest, as he certainly was an intelligent man, and an experienced attorney, there were many weak places in his machinery through which we cannot but think it probable the light would have penetrated to his mind, at least his eyes would have been open to the propriety of inquiring; but if he were not honest, there were other persons to whom it was necessary at the time to present all the appearance of this being a regular transaction. We have no reason to doubt the innocence of Mr. Bircham, his partner, or his clerks and it was quite essential both for present success and after security, that they should from time to time interfere in the details of this as in any other transaction in the office. The most ordinary forethought would suggest this to the most ordinary mind.
89. Mr. Barber points out that Fletcher being guilty, looked always to the end, and regulated all his own movements and personal interference with a view to the consequences of an ultimate discovery. If he himself were also guilty, it is not, therefore, unreasonable to infer that he would have the same forethought, and resort to the same contrivances. Be it observed, that we do not assume his guilt from these, we only say that they are consistent with it when they are brought forward as proof of his innocence.
90. In drawing a conclusion as to the character of Mr. Barber's conduct in this case, it would be scarcely just to bring it to the severe test to which his learned counsel, in the warmth of his arguments, invited us. According to that, Mr. Barber was not merely an unfortunate and

innocent man, but a man remarkable for a nice sense of honour; of the most scrupulous integrity; who had steered his way through this and all other transactions at once delicately in point of honour, and most cautiously and prudently in point of conduct; who had been the victim of an unusually artful man, and only been deceived by contrivances against which unusual caution was insufficient to protect him.

91. It is impossible not to see that this is mere exaggeration, hopelessly addressed to any minds accustomed to try statements by the evidence; yet Mr. Barber may have been much less estimable for honour or prudence than has been represented, and yet entitled to succeed on this application.
92. But considering that he was an attorney of some experience, a man whose great intelligence and acuteness it is impossible to doubt; that Fletcher brought him business, and imposed on him conditions in transacting it which could not fail to excite an intelligent man to caution at least, if not strong suspicion, that the particular case was not one which began and ended with a single act, or in a short time, on which even a cautious man might have been surprised into a single indiscretion, but was continued through a series of stages, occupied much time, and afforded repeated opportunities for consideration, which, by the very nature of the steps to be taken, it repeatedly called for, we should have found it extremely difficult, after well weighing the explanations now afforded to arrive at any other conclusion than that to which the jury arrived, had we been as they were, confined to the merits of the single case before them. Indeed, the explanations, stripped from the effect, and derived from the unmerited hardships and severe sufferings to which Mr. Barber has been exposed, seem to us very unsatisfactory.
93. But we cannot confine ourselves to the facts of any one case in drawing our conclusion now as to the weight which they ought to have in our determination on the rule before us; whether we ought to believe that Mr. Barber has misconducted himself knowingly and wilfully, or only been the victim of another man's fraud in this particular case, must depend not solely on the nature of the acts themselves, but must, in a measure, be affected by what we think of his conduct in other similar transactions, and by our opinion deduce from everything before us of his character, moral and intellectual.
94. In the cases of Burchard and Hunt, as well as in those of Stewart and Slack, frauds of the highest criminality were committed by the agency of Mr. Barber. It was important for the success of the fraud that the transactions should be conducted by a professional man of apparent respectability, and as Mr. Barber was employed professionally in all the four fraudulent transactions, he must have been either an agent directly cognisant of the frauds, or an agent wilfully blind to the frauds though he might have suspicions; or a blind unconscious agent having no doubt whatever of the honesty of the transactions.
95. It is this last which Mr. Barber says he was. He says he doubted nothing; he believed every thing, relying on the character, conduct, and respectability of Fletcher.
96. Fletcher is represented as a person of considerable property, gentlemanly deportment, and great plausibility and cunning; but the transactions in which Mr. Barber found him engaged were, at best, of a very doubtful character; procuring, surreptitiously, information as to

unclaimed stock and dividends, and their amounts, he proposed to sell his information to those who might be interested in them - a mode of making money almost suggestive of the frauds that did take place, by showing how easily such frauds might be committed, and in the great majority of cases the little chance of detection. Any one would have supposed that the nature of the transactions in which he was engaged would have disposed Mr. Barber a little to distrust him and the clients whom he introduced, or at least to use extreme caution in any of the transactions in which he himself might be engaged upon the introduction of Fletcher.

97. But were the transactions themselves so perfectly free from cause of suspicion on the face of them as to leave Mr. Barber no room for doubt? In two years (independently of Stewart's case) Fletcher is fortunate [504] enough to discover several legatees of specified quantities of stock whose testators seemed to have forgotten to receive their dividends for many years, though they were fully aware of the amount of stock they had, who omit all mention of the unclaimed dividends in their wills, though they specify their stock, and whose property would be little, if anything, more than the stock. Such a coincidence would seem extraordinary, and calculated to excite suspicion, though a single case might have failed to do so.
98. The circumstances attending Hunt's will are sufficiently remarkable. A will made in 1829 by a person who died in that year devising a specific quantity of stock, of which she had never received the dividend for twenty-three years, to a person who does not obtain or procure the will for thirteen years after the death of the testatrix, would seem to require strict investigation and inquiry, but Mr. Barber, relying on Fletcher, makes none; the proctor and other persons officially engaged, relying on Mr. Barber, make none; and the gross fraud is committed with the utmost facility.
99. This remarkable case is followed, within a few months, by one equally striking in its particulars, that of Slack, upon which Mr. Barber was convicted; but neither of them produce, as it is said, the slightest doubt or suspicion in the mind of Mr. Barber.
100. Mr. Barber appears to be a shrewd, sagacious, experienced man in his profession; and it is difficult, if not impossible, to believe that such a man would be wholly free from doubt or suspicion when so many transactions calculated to raise both doubt and suspicion were presented to him by Fletcher, unless, indeed, he became wilfully blind, and was determined to ask and to know nothing.
101. The case against him does not depend upon one transaction, in which he may have been deceived, and have had no suspicion, but upon several, the numbers and similarity of which could hardly have failed to have excited surprise and consequent doubt and suspicion.
102. It is, moreover, very remarkable that no more than one of the plaintiffs came under the cognisance of the same proctors. In every case a different proctor was employed, so that the similarity of the circumstances in each of these transactions, which would or might strike Mr. Barber, would not be a subject of doubt with any of the proctors.

103. Upon the whole, there seems the strongest reason to conclude that if Mr. Barber was not directly cognizant of the frauds in the forgery cases, or some of them, it was because he must have been wilfully blind, and did not choose to inquire into the character of those transactions.
104. Much stress was laid in the course of the argument upon the declaration made by Fletcher and Saunders [sic] as to Barber's innocence of the forgeries. We cannot attach much weight to such declarations, and at the utmost, if credited, only go to prove him not guilty of the precise offences with which he was charged by the indictments.
105. Looking, however, at all the circumstances of these different cases, and trying the conduct of Mr. Barber in the course of them according to the text which we have described in the observations we have made upon them, and endeavouring to make every reasonable allowance for the difficulties in which he is at present placed in explaining his conduct, we regret to say that we cannot but see such proofs of Mr. Barber's complicity with Fletcher in many parts of these transactions as renders it our imperative duty to decline to grant him his certificate and authorise him to practise as an attorney of our court. The rule must therefore be discharged.

[ends]

## Appendix 51 Argument in second application for practising certificate

The Times, 6 May 1851

### COURT OF QUEEN'S BENCH<sup>107</sup>

#### EX PARTE WILLIAM HENRY BARBER

1. Mr. Roebuck, Q.C., said he was instructed to move for a rule, calling upon the Incorporated Law Society to show cause why William Henry Barber should not be permitted to renew his certificate as an attorney of this Court.
2. Lord CAMPBELL said, the Court would hear the learned counsel if he had any new matter which he was able to lay before the Court which had come to his knowledge since the former application, and which could not reasonably be expected to have been brought forward on that occasion. The case had then been very fully argued, and he (Lord Campbell) was bound to say that he had read the judgment, which was very elaborate, more than once, and was perfectly satisfied with it. It was only, therefore, on the understanding that new matter would be brought forward that the Court could again hear the question discussed.
3. Mr. ROEBUCK said, he was now for the first time instructed in the case, but he would endeavour to address the Court so as not to violate the rule which his Lordship had laid down for his guidance. Before, however, he came to the new matter which he wished to introduce to the Court, he observed that in a case like the present, which consisted of cumulative items of suspicion he was justified in arguing the case as if the applicant had been acquitted of the offence of which he was tried. He would also dismiss altogether the charges of malpractices which had been made against him.
4. Lord CAMPBELL said the judgment of the Court did not proceed upon them.
5. Mr. ROEBUCK said, he should point out certain errors in fact upon which the judgment of the Court had proceeded. The Court would bear in mind that previous to these transactions the applicant had maintained an unimpeachable reputation, and enjoyed a large professional income of from £3,000 to £4,000 a-year, chiefly derived from conveyancing.
6. There was also his conduct in Norfolk Island, and other circumstances which took place after the conviction, from the consideration of the whole of which the Court was shut out on the former occasion. They were circumstances of very great importance, and could not possibly have arisen from any collusion between the parties. On the present occasion all these circumstances were verified by affidavits, against which no objection could now be made.
7. The Court had decided the case upon the ground that Mr. Barber, if not directly guilty, was wilfully blind as to the nature of the transactions and did not choose to inquire into their nature. He (Mr. Roebuck) now undertook to show that the circumstances were not of the nature supposed, but, on the contrary, that Fletcher, the prime mover in the frauds, had declared that he so contrived everything as to deceive Mr. Barber, who acted as his attorney.

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<sup>107</sup> *The Times* (1851) 'Court of Queen's Bench. Ex parte William Henry Barber' 6 May.

That declaration was now before the Court, and had been made by Fletcher when all his own prospects in life had been shipwrecked and he had nothing whatever to gain except the satisfaction of doing justice to a man whom he had injured.

8. The learned counsel then proceeded to state, that after Mr. Barber's arrival in Norfolk Island he had received a pardon, not upon any technical ground or upon the ground of his good conduct, but upon the ground that he was not guilty of the offence of which he had been convicted. The learned counsel then read extracts from affidavits made by the Rev. Thomas Rogers, the chaplain of the convicts in Norfolk Island, who was now in this country, and by other gentlemen, speaking in the strongest terms of Mr. Barber's conduct in Norfolk Island, and referring to other circumstances which led to the conclusion that he was innocent. If those circumstances were brought before the Court, he (Mr. Roebuck) thought they would leave no doubt in their Lordships' minds as to his innocence.
9. Lord CAMPBELL said,- The learned Judge (Patteson), in giving judgment, had stated expressly that it appeared that he (Mr. Barber) had borne his punishment with great fortitude.
10. Mr. ROEBUCK said, what he was about to bring forward related more particularly to the chief criminal (Fletcher), and Mr. Barber's conduct towards him, which was quite inconsistent with the supposition that he was guilty. That evidence showed that, during the whole of the outward voyage, Fletcher had shown an unfriendly disposition towards Barber, and often complained of Barber's behaviour towards him; but, notwithstanding these circumstances, at the end of the voyage he (Fletcher) repeated a declaration which he had previously made before he left England, to the effect that Mr. Barber was entirely innocent, and that he had no knowledge whatever of any of the other parties to the frauds except under the names which they assumed for the purpose of committing them. That declaration, several times made by Fletcher under circumstances which rendered it free from suspicion, was, he submitted, entitled to great attention from the Court.
11. Then there was an affidavit made by a person named Thomas Howarth, who had formerly acted as Mr. Barber's clerk, who explained how calculated many of the circumstances were to deceive. One of the claimants had been introduced to Mr. Barber dressed like a mariner, with a hardy weather-beaten appearance as if he had just returned from sea. It was in that manner the great romancer, Fletcher, had concocted these frauds.
12. In one of the cases the Court had fallen into a mistake in supposing that a demand had been made for arrears of dividend which had remained unpaid since the year 1806. The claim was only made for dividends from the year 1829, and in fact it was not known that the dividends were due from the earlier date till the whole case blew up.
13. The affidavit of Howarth went on to state that it was generally believed in the office that Fletcher was a man of wealth and respectability, which was a reason to induce Mr. Barber to trust him, and that the latter had never received anything for his services beyond the usual professional charges. Could it be supposed that for such small sums he would be willing to risk an income of £3,000 or £4,000 a-year, and in fact everything that was dear to him in life?



14. The learned counsel then referred to, and commented upon the circumstance that the real Miss Slack had denied her age, stating that she was only 28 years of age, and had also stated that she had not executed a power of attorney, when in point of fact she had done so 12 years before, and dwelt upon the effect which such misstatements would have in misleading Mr. Barber.
15. The learned counsel then read several of Fletcher's letters to Mr. Barber, which, he observed, were artfully drawn up, and calculated to mislead any person; and, having commented upon the general facts of the case, so far as he could do within the limits laid down by the Court, he concluded by expressing his hope that Mr. Barber might still be allowed to practise as an attorney, and that the Court would grant the application which he now made, to be permitted to take out his certificate.
16. Lord CAMPBELL said, the case was one of great difficulty and delicacy, and the learned counsel (Mr. Roebuck) had stated it with great perspicuity, force, and propriety. The Court would take time to consider their decision, and, after looking at the affidavits, would on a future day state whether they would grant a rule.

[ends]

## Appendix 52 Judgment in second practising certificate application

Wednesday, June 4.<sup>108</sup>

Re WILLIAM HENRY BARBER

*Attorney-Misconduct-Renewal of certificate*

### JUDGMENT

1. Lord CAMPBELL C.J. - We have deferred giving our opinion upon the fresh application in this case made in last Easter term, that we should have an opportunity to peruse the additional affidavits, and to reconsider the judgment formerly pronounced by the Court in discharging the rule granted to show cause why Mr. Barber's certificate as an attorney should not be renewed.
2. Having done so very deliberately, and without regard to any technical difficulties which might have stood in the way of our giving full effect to any equitable circumstances, we are deeply concerned to be obliged to declare that we see no sufficient reason for altering the view before taken of his conduct in these transactions.
3. I may mention that although I had not the honour to be a member of this Court when the former judgment was pronounced, I have several times perused that most elaborate judgment, and I entirely concur in the conclusion at which my learned brothers have arrived - that if Mr. Barber was not directly cognisant of the frauds in the forgery cases, or some of them, it was because he must have been wilfully blind, and did not choose to inquire into the character of these transactions.
4. If such was the state of his mind when acting as Fletcher's attorney, and enabling that wicked man in four successive cases to avail himself of forged wills, although he might not be a party to the forgeries, surely he is not a fit person to be permitted to practise as a solicitor.
5. Had he been merely the dupe of Fletcher, God forbid that he should be debarred from the exercise of his profession even if he were chargeable with a high degree of indiscretion and supineness; but if an attorney, suspecting that his client is engaged in a systematic course of fraud and forgery, continues to act for him as if he were assisting to enforce just rights, and to give effect to genuine documents, he is guilty of gross misconduct, although not originally privy to the frauds, and although never informed of the manner in which the forged documents were obtained, and although, to carry on the imposture, persons may be introduced to him acting in a feigned name.
6. The principle on which the Court proceeded cannot, therefore, be disputed; and I think that the proof supported the inference they drew.
7. In the new affidavit we find no facts brought forward to alter our opinion. Fletcher's exculpation of Mr. Barber is made more distinct and prominent; but from long experience we have learned that little weight is to be given to the statements of such a convict as

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<sup>108</sup> *Re William Henry Barber* (1851) 17: 427 *Law Times*, 7 June, 142.

Fletcher, and he leaves untouched the main facts on which we consider suspicion, amounting to complicity, must have entered Mr. Barber's mind.

8. Unfortunately for Mr. Barber, we are greatly strengthened in the belief that a just view of his conduct was before taken by the Court, from the information he has afforded us in his new affidavit as to the principles on which he acted. In commenting on one of the cases of forgery, he saith-

“that the instructions given to me by the said J. Fletcher neither in this case nor in any other case involved or directed any deceit, mis-statement, or mis-representation, nor even any suppression of the truth on the part of this deponent, except so far as might be necessary to prevent parties from setting up unfounded claims, or sustaining claims that were well founded to the prejudice of the said J. Fletcher's title to just and reasonable compensation: denies that he ever practised any deceit or any suppression of the truth, except so far as [in the exercise of what he considered to be a sound professional consideration<sup>109</sup>] was necessary to avoid the success of unfounded claims tending to litigation, and to secure such a compensation as aforesaid to a client whose business was valuable to this deponent, and whose character and objects he had at that time no reason to distrust.”

9. This remarkable passage seems to us to afford a clue to Mr. Barber's whole conduct, and confirms us in the belief that, although he might never have contrived the forgeries, nor been Privy to the execution of them, he chose to be ignorant of all the particulars which it would have been inconvenient for him to know, and that he wilfully abstained from making such inquiries as a respectable attorney ought to have made, because he felt he must either have declined the business and quarrelled with Fletcher, or have become an active party to the transactions, however guilty they might have turned out.
10. Adhering to the principle of the former decision, and finding nothing in the affidavit to induce us to vary from the conclusion of fact which the Court have taken, we are bound to refuse the rule to show cause, which was moved for by Mr. Roebuck; and we wish it to be understood that this is our final judgment, which the misconduct of the individual has drawn down upon him, and which a due regard for the pure administration of justice has required us to pronounce. There will therefore be no rule.

[ends]

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<sup>109</sup> These words are in the judgment and are only placed in square brackets to make the sentence easier to read when the bracketed text really should have been within commas or parentheses.

## Appendix 53 Arguments in third application for a practising certificate, 1855

### First day

#### *Morning Post version*<sup>110</sup>

JUNE 9

(Sittings in Banco, before Lord Campbell, and Justice Coleridge, Erle and Crompton)

#### IN RE WILLIAM HENRY BARBER – APPLICATION FOR THE RE-ADMISSION OF AN ATTORNEY

In this case a rule had been obtained for the re-admission of Mr. Barber to practise as an attorney, when the Court, having some years ago ordered him to be struck off the rolls,<sup>111</sup> intimated that the present rule must be argued, solely upon new matter which had not previously been before the Court. The case has been so frequently before the public, that it is unnecessary to go into details.

Sir F. Thesiger, who now showed cause against the rule, said it was with sincere regret he had to oppose this application, as there was nothing whatever imparting new matter into the case, and so far from there being any ground for reopening it, he thought Mr. Barber would be in no better position than he was before the motion was made. If there were any new matter it had no bearing whatever on the case so as to induce the Court to alter the deliberate judgment at which it had arrived. There was great inaccuracy between the affidavits and the exhibits, and Mr. Barber must have been wilfully blind to have allowed himself to have been imposed upon by Fletcher, as he alleged. Having gone minutely through the affidavits, the learned counsel concluded by saying, that in the discharge of the most painful duty he had to call on their lordships to refuse the present application, as there was nothing to induce them to alter their judgment.

Mr. Bovill, followed on the same side.

Sir F. Kelly, in support of the rule, said that coupling the evidence which had been brought under the consideration of the Court with the facts on which their judgment had been founded, he did not despair of satisfying their lordships that upon all the most material grounds they had pronounced judgment either upon a misapprehension of the real facts -

Lord Campbell, interrupting the learned counsel, said it was his duty to state that in referring to matters already before the Court, Sir F. Kelly was travelling beyond the scope of the basis of the present application. The Court had not imputed to Mr. Barber that he had committed a forgery, but that he might have known or had wilfully abstained from making inquiries which would have led him to the knowledge of the real facts.

Sir F. Kelly, in proceeding with his argument, proceeded to apply several new circumstances as answers to the paragraphs in the judgment, and contended that if these new matters had been before the Court before it had delivered judgment, their decision would have been different, and that they were now sufficient to induce them to alter it, and put Mr. Barber, who had suffered so long and so much, in his proper position.

The arguments had not concluded when the Court rose.

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<sup>110</sup> *Morning Post* (1855) 'Law Intelligence; In re William Henry Barber' 11 June.

<sup>111</sup> An error: Barber had not been struck off.

COURT OF QUEEN'S BENCH, JUNE 9.

(Sittings in Banco, before Lord Campbell, and Justices Coleridge, Erle and Crompton)

IN RE W.H. BARBER – APPLICATION FOR THE RE-ADMISSION OF AN ATTORNEY

Some time since a rule was obtained in order that Mr. Barber might be reinstated an attorney of this Court, it being at the time intimated that the case must be argued, solely upon new matter, which had not already been before the Court. The subject has been so often before the public, that a reiteration of it is unnecessary.

Sir F. Thesiger, now showed cause against the rule, stating his sincere regret at being compelled to oppose the application, but the importance of the inquiry rendered it necessary.

Mr. Barber said he had discovered new matter for his application; that there was the entire of the register of Ann Stock and Ann Slack; but the new matter referred to had nothing whatever to do with the question.

Another alleged new matter was that of the confession of Georgiana Dorey, who was one of the conspirators, but that matter had been brought before the Court in 1851.

Mr. Barber then said he had discovered some Chancery proceedings, but he had referred to this very matter in his affidavit in 1849, which was set out in one of Mr. Barber's pamphlets.

Mr. Barber also introduced affidavits of a clergyman and a doctor at Van Diemen's Land, but they contained nothing more than was before the Court in 1850.

There was not anything like new matter in that part of Mr. Barber's affidavits. There was a statement made as to something which had taken place between Mr. Barber and Sir George Stevens [sic], but which the latter gentleman had not verified.

So far from there being any ground for re-opening the matter, he (Sir F. Thesiger) thought Mr. Barber would not stand in a better position than he had already done. The learned counsel then went most critically through the details of the affidavit, contending that there was no new matter whatever brought before the Court; if anything, however, could be found that was new, it had no bearing whatever upon the case, so as to induce the Court to alter its judgment already given.

The instructions which Saunders [sic] had given to Harmer [sic], his attorney at Bristol, for his defence at the trial were professed to be set out, whereas, upon a close perusal it would appear that they were garbled, and that there were many omissions, which would be seen upon a comparison of the affidavit with the instructions.

There was an inaccuracy between the affidavit and the exhibits, and the learned counsel read several passages, with a view of showing this.

Mr. Barber must have been wilfully blind to have allowed himself to have been imposed upon by Fletcher, which he said he had been.

Their lordships were entrusted with the important duty of taking care that only proper persons should be admitted to practise as attorneys in this Court; and they had manifested their earnest

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<sup>112</sup> *Morning Advertiser* (1855) 'Law Intelligence: In re W.H. Barber' 11 June.

wish that Mr. Barber should bring forward something new, in order that the judgment they have pronounced might be reversed. He (Sir F. Thesiger) was bound, in the discharge of a most painful duty, to contend that nothing new had been introduced, nor were there any circumstances brought forward to induce the Court to alter its judgment, but, on the contrary, showed that Mr. Barber was utterly unworthy to practise as an attorney of that Court.

Mr. Bovill followed on the same side.

Sir F. Kelly, then, in support of the rule, said he trusted that the time was about to arrive at which full justice would be done to this gentleman, and if he could only prevail upon their lordships – and he was quite sure he should not solicit thus much at their hands in vain – to listen to the very few observations he should have to make in the way of comment, either upon the judgment pronounced by the Court or upon the affidavits, and also to follow him in the references, he did not despair of completely satisfying their lordships that the evidence now brought under the consideration of the Court, coupled as far as it was necessarily connected with facts already before the Court – he did not despair of entirely satisfying their lordships that upon all the most material grounds the Court had pronounced judgment either upon a misapprehension of the real facts -

Lord Campbell here interrupted the learned counsel by saying it was his duty to state that the scheme suggested by the learned counsel for his argument was not within the scope of the basis of which the application was to be heard. The Court had not imputed to Mr. Barber that he had committed a forgery, but that he might have known or had wilfully abstained from making inquiries which would have led him to the knowledge of the real facts.

Sir F. Kelly then proceeded with his argument, and went into the most minute detail of the circumstances of the charges made against Mr. Barber and the evidence laid before the Court. The learned counsel read the judgment of the Court sentence by sentence, and then endeavoured to apply small circumstances as an answer to each paragraph, and contended that had such facts been before the Court prior to the decision, such a judgment would never have been pronounced, and that now being placed before the Court, would induce it to reverse its judgment, and put this gentleman, who had suffered so long and so much, in his proper position.

The Court rose before the conclusion of the arguments.

## **Second day**

Saint James Chronicle<sup>113</sup>

COURT OF QUEEN'S BENCH.

*(Sitting in Banco, at Westminster.)*

IN RE W.H. BARBER.

In this gentleman's case, which has been so often before the court, a rule had been granted to restore Mr. Barber's name to the roll of attorneys, on affidavits disclosing certain new facts recently come to light, tending to negative any guilty knowledge or participation by Mr. Barber in the transactions for which he was tried, convicted, subsequently pardoned, but struck off the rolls of this court.

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<sup>113</sup> *St James Chronicle* (1855) 'In re W.H. Barber' 12 June.

Sir F. Thesiger and Mr. Bovill now showed cause on behalf of the Law Institution, and contended that the affidavits disclosed nothing really new, or, if anything was new, it was insignificant; and that the court had already most fully investigated the case, and pronounced its judgement upon it.

Sir F. Kelly (with whom was Mr. Macnamara) was heard at considerable length in support of the rule, contending that on the affidavits, as they now stood, the innocence of Mr. Barber of all improper connexion or connivance in the transaction was most manifest.

Lord Campbell said that the case had been argued with great ability and propriety; and as the case was of great importance to Mr. Barber the court would take time to consider their judgment.

[ends]

## Appendix 54 Judgment on third practising certificate application, 1855

**Law Times**<sup>114</sup>

*Wednesday, Nov. 21.*

*Re BARBER.* – Lord CAMPBELL, C.J.: After mature deliberation we think that the evidence to establish Mr. Barber's connivance in the frauds practised by the parties who employed him as an attorney, is too doubtful to warrant us in continuing his exclusion any longer; and we therefore make absolute the rule for his re-admission.

Rule absolute

**Legal Observer**<sup>115</sup>

In the case of the application of Mr Barber to be re-admitted an attorney of this Court, we have long and anxiously considered all the evidence laid before us, and the Court have arrived at the conclusion: that the evidence to establish his connivance with the fraud of Fletcher alleged against him, is too doubtful to induce us to continue his exclusion any longer, and therefore the Court orders the rule for his re-admission to be made absolute.

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<sup>114</sup> *Law Times* (1855) 'Re Barber' *Law Times* 90:26, 24 November.

<sup>115</sup> *Legal Observer* (1856) 51 'Case of Mr. W.H. Barber', Saturday 24 November 1855, 75. [#95 - 'The legal observer and solicitors' journal v. 51 1856. - Full View | HathiTrust Digital Library](#)



## Appendix 55 Extract: Sir George Stephen (1851) *The Royal Pardon Vindicated*

[page 49]<sup>116</sup>

The first, and the most important of these errors, is to be found in the following words: “And now the means of forgery having been obtained through Barber's application for the signature,” that is, the signature of Miss Slack, the real owner of the stock.

Nobody will deny - it cannot be denied — that if Fletcher contemplated the acquisition of the stock by aid of the signature of the real owner, or if the circumstances of the case implied the necessity of counterfeiting her signature to obtain the stock, Mr. Barber's activity in procuring her signature was such strong presumptive evidence against him, that even if a dukedom had been added to the royal pardon, it would not have reinstated him in credit. To refuse his readmission to the profession under the impression that such was the actual case, was an imperative duty of the Court, and had it been the case, these pages, at all events, would never have been written.

But it was not the case; and moreover the very nature of the fraudulent machinery, and of the evidence before the Court, proved that it could not be the case. And more still, that the signature of Miss Slack not only was not required for a guilty purpose, or, to use the words of the judgment,” as a means of forgery,” but could not by any possibility be required by Mr. Barber, except as a means of identification, and never was counterfeited throughout the transaction, even by Fletcher himself: he forged it, it is true - not by imitating her writing, but by studiously avoiding any resemblance to it! This will be explained hereafter.

We will make good every syllable.; but, first, let it be supposed, with the Court, that it was actually and really required for a guilty purpose, or as “a means of forgery.” Does not this of itself tend to the strongest presumption of Mr. Barber's innocence? The Court describes him as “an experienced and intelligent London attorney.” Is it conceivable that any attorney, whether experienced or intelligent, metropolitan or not, would openly and undisguisedly apply to Miss Slack's relatives and attorney for her signature, with the intention of counterfeiting it? Does such suicidal, self-stultifying folly, come within the compass of probability, or even of imagination? Or, were it possible that Mr. Barber could be thus demented, is it to be supposed that either Captain Foskett or Mr. Baxter (also an experienced and intelligent London solicitor), would be so foolish and rash as to entrust her signature to a stranger, unless for a good and sufficient reason?

Thus, even conceding it were to be used as “the means of forgery,” it proves that the contemplated forgery could be none to which Mr. Barber was privy.

But it was not wanted as the means of forgery, but as the means of testing identity. Even Fletcher himself could (under the very peculiar circumstances of the case) have wanted it for no other purpose. The object of obtaining the signature, was only to ascertain if the stock really belonged to her or not. Fletcher and Christmas did ascertain this, but they deceived Mr. Barber.

For a reason presently given, we must assume that it escaped their Lordships, that the evidence before them proved the forgery in contemplation, to be that of a *will*, not of a Bank transfer or dividend receipt, and consequently, that the signature to be counterfeited was that of a dead person, not a living one; that the transfer would be made, and the dividends received, by a new person, whose writing was hitherto unknown at the Bank; by an executrix and legatee, not the

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<sup>116</sup> Sir George Stephen (1851) *The Royal Pardon Vindicated, in a Review of the Case Between Mr. W.H. Barber and the Incorporated Law Society*. London: John Crockford, 49-52.

stockholder upon an old account. How was it possible that Miss Slack's signature could in any way assist (except as we shall presently mention) in the commission of such a fraud? It could assist, and it did assist, in identifying the owner; and it enabled Fletcher to steer his course, not because it served him in cheating the Bank, but in deluding Mr. Barber! If he had never seen Miss Slack's signature, Fletcher would equally have succeeded in his plot, so far as concerned the Bank; but it was apparent that, unless Mr. Barber could be checked in his course, he might stumble on the truth by making the comparison of handwriting for himself; for he might have done so, through his own stockbroker, without any breach of confidence or instructions. Unfortunately, he still thought that his duty and professional honour precluded all communications, except under the sanction of his client; and therefore he trusted the examination of the writing to Fletcher, in preference to his own stockbroker. Instead of the signature to the will being an imitation, as the judges appear to have supposed, of the handwriting of Captain Foskett's sister, it was studiously different from it — a precaution evidently of Fletcher's, lest Mr. Barber (who, it will be remembered, had *very recently* applied for and obtained her signature) should have been struck with any resemblance.

But it will be replied that the judicial expression is correct, because the signature to the will ought to have tallied with the signature to the power of attorney, though not with that of the legatee.

No doubt this is true; but it can scarcely have been the judicial meaning, because the words are used in censure of Mr. Barber; whereas such a construction of them lets in a conclusive argument, amounting to demonstration, of Mr. Barber's innocence. It cannot have escaped such an accomplished knave as Fletcher, that the signatures of the will and of the power ought to have corresponded, allowing for the difference of twelve years in age; that there was a risk that comparison might be made by the Bank clerks, and thus lead to detection: he doubtless did see this, and might even have at first contemplated using Miss Slack's signature, the power not being accessible to him, for the purpose of counterfeiting it in forging the will. Even if it could have escaped himself, it must have occurred to such an accomplice as an intelligent, experienced attorney; why, then, was the first idea abandoned, and the probable vigilance of the Bank set at defiance? Why was a forged will prepared, without even an attempt to counterfeit the true signature? Why was a stiff, upright, large hand, substituted for the fluent elegant writing of the power of attorney, after a week's opportunity to imitate it? Simply because Mr. Barber was not the accomplice, but the dupe! Because it was more immediately dangerous to incur detection by him than by the Bank clerks; and had Miss Slack's signature been counterfeited, as it ought to have been in prudence, the similarity could not fail to have been promptly noticed by Mr. Barber the instant that the will was brought to his office! The conduct of Fletcher, in thus hazarding detection at the Bank, in order to keep up his deceit upon Mr. Barber, is in perfect harmony with his proceedings throughout, and proves to demonstration how entirely Mr. Barber was blindfolded.

[ends]

## Appendix 56 Barber's Comments on *Stewart* from his 1854 Book

[Barber interlaced comments with long extracts from the judgment, which are omitted here. Sidenotes are also omitted.]

[Page 19]<sup>117</sup>

Before I proceed to comment on the judgment in Stewart's case, I entreat the reader to bear in mind that it was the first case of unclaimed dividends in which I was employed, and that Fletcher, who instructed me, had, as afterwards transpired, been *for ten years previously* engaged in similar frauds, several of them of great magnitude, in which he was professionally assisted by other attorneys, whose integrity has never been called in question.

See the particulars which have recently been obtained of one of these frauds, appendix [sic]

The Court correctly observes that my aid was not sought by Fletcher until after the execution of the administration-bond. He had in fact hoped to have arranged the transfer of this stock without any legal assistance, and it was not until difficulties arose requiring the help of an attorney that I was employed.

Their Lordships admit that the propriety of my acquittal “does not seem doubtful,” yet proceed to inquire whether I may not have been in some way or other guilty. Now, considering that I could only offer evidence to meet the particular charge against me, that I have been wholly exculpated from all guilty participation by the confession of the author of the fraud, and by the unqualified avowal of my prosecutors – her Majesty's Government, - and that the master admits that “no new circumstances have been brought before him which were not before the jury,” I do feel much surprise at the implication of the Court, but I may have been guilty on some other ground than that selected by my prosecutors. The Court, in effect, endeavours to find materials to originate a new charge. I should have less ground of complaint of such a course if I had been afforded an opportunity of meeting the queries raised by their Lordships, but I only hear of them in the judgment, and when I afterwards applied for a rule *nisi*, in order that the misconceptions of the Court might be pointed out and explained, I was told that the case was *res judicata*, and the rule was refused.

### EXTRACT 10<sup>118</sup>

[Page 20]

It is indeed singular that it should have escaped the counsel on both sides as well as all the three Judges who presided at the trial, to ask the undoubtedly very pertinent question which their Lordships have suggested, and it only shows of what oversights the most acute and able minds may be guilty.

### EXTRACT 11<sup>119</sup>

[Page 21]

These certificates were procured before I was instructed [-] there is no doubt they were obtained by Fletcher.

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<sup>117</sup> BB (1854) Elucidation of the Judgment, 19-32.

<sup>118</sup> See paragraph 22 in the judgment, Appendix 50.

<sup>119</sup> See paragraph 22-24 in the judgment, Appendix 50.

## EXTRACT 12<sup>120</sup>

[Page 22]

Emma Hartwell, the servant who attended upon her at her lodgings, was produced by the prosecutors, and in her deposition before the Lord Mayor she said – “Mrs Stewart was very infirm, and appeared to be between seventy and eighty,” and at the trial the same witness said – “Mrs Stewart suffered from gout.” Her advanced age and respectable demeanour were well calculated to create confidence, even if she had not been introduced by a wealthy man who had been my client for more than a year.\* Mrs Dorey, in her statement given in evidence by the prosecution says, “Fletcher was fearful my mother would not live to go through the business. He took her medicine nearly every morning. She was then about seventy-one or seventy-two years of age.”

\* Such was the confidence of the proctor, that he received her upon the introduction of Fletcher, who was a perfect stranger to him, and at once proceeded to procure the administration, and even provided one of the bondsmen.

## EXTRACT 13<sup>121</sup>

[Page 23]

The two circumstances of suspicion stated by the Court are –

1<sup>st</sup>, Why did I not produce the certificates?

2ndly, Why did I not suffer Bezant [sic] to go and see the supposed sister or obtain from her answers to Bezant’s inquiries?

I feel assured that the Court would not have alleged the non-production of the certificates as a circumstance of suspicion if it had known that the certificates were not in my possession at the time the inquiry was made. They had been annexed to and filed with the affidavit at Hyhe neglected to do that, surely it can be no circumstance of suspicion against me. In consequence of Bezant’s request, I made an express application to the proctor for a copy of the affidavit and for the certificates, to which application I received the following answer –

“STEWART, DECEASED

DEAR SIR, - According to your request I forward you a copy of the affidavit made by Mrs Stewart and Mr Griffin, explanatory of the lapse of time in applying for administration. The certificate of burial was returned to you, and the two certificates of baptism are, of course, filed with the original affidavit. You must, therefore, obtain fresh ones, if they are required.

My charge for this is 3s. 6d.

I remain yours, obediently,

FREDK WILLM POTT\*

Doctors’ Commons, 21<sup>st</sup> Sept, 1840

W.H. BARBER, Esq.

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<sup>120</sup> See paragraphs 25-26 in the judgment, Appendix 50.

<sup>121</sup> See paragraphs 26-27 in the judgment, Appendix 50.

\*This confirmatory letter has been found since the judgment was delivered.”

[Page 24]

Upon the receipt of this copy affidavit, I handed it to Mr. Thompson, giving him the explanation as to the certificates that I had received from the proctor. Their Lordships appear to have fixed their attention exclusively on the evidence of Bezant, the clerk, overlooking that of Mr. Thompson, who says, “Mr. Barber called on the 24th September, and produced a copy of the affidavit, and there were no certificates attached to it.” I asked him for the certificates, he said “they were filed.”

Bezant, with Mr. Thompson, was present at this interview, and he must also have heard my explanation, but independently of this the affidavit filed, of which he had a copy, recited that the certificates were “thereunto annexed,” and it also gave the residence of the deponent, the supposed sister. The court considers it suspicious that I did not suffer Bezant to go and see her. If Bezant’s evidence is alone read, it might be inferred that I objected to his going, he says, “I suggested that we might see the sister. I rather think he said she was indisposed – at all events, there was an answer given that we could not see her.”

Mr. Thompson's evidence is in these words. – “He said that she was very infirm and *could not come*,” which was really the explanation given by me to Bezant. If he considered it important, I cannot understand why, having the address, he neglected to apply to her personally. As a proof that I did not offer any impediment to direct communication with her, I may mention that Mr. Hill, the broker, found that he had overpaid the produce of the stock by about three pounds, and after the business was settled, he applied to me to get back the overpayment. I told him that he had better himself applied to Mrs. Stewart, to enable him to do which I at once gave him her address. This fully appears by Mr Hill’s evidence on the trial. Having in view the age and infirmity of the supposed sister, and which I represented to Bezant, it did not strike me as remarkable that she should send a letter instead of making a personal visit to Marlow.

#### EXTRACT 14<sup>122</sup>

[Page 25]

It is *assumed* that I “must have learned at Marlow that the deceased was considered to be a Scotchman.” Of the seven persons of whom I there made inquiries (with the view chiefly of tracing out any other property of the deceased), the prosecutors selected three[:] two of them would not pretend to say they had told me they considered [sic] deceased to have been a Scotchman, the third, Robert Loosely, at first said he had told me the deceased came from Scotland, but upon cross-examination he said, “*I will not swear that I said a word about Stewart’s country*, it is so long ago.” All the witnesses agreed that the deceased was a very reserved man and rarely alluded to his family.

#### EXTRACT 15<sup>123</sup>

[Page 26-27]

The Court has done me the justice altogether to reject Hyatt's testimony. It was proved that Fletcher was at Marlow with Hyatt in the month of May, 1840, and Hyatt swore most positively that I went down a fortnight after, I again quote the evidence – My counsel having handed him the tavern bill with the date folded down, Hyatt admitted the bill to be in his own writing, “and

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<sup>122</sup> See paragraph 28 in the judgment, Appendix 50.

<sup>123</sup> See paragraphs 28-30 in the judgment, Appendix 50.

that he recollected the items.” The examination continued - “Did Mr Barber visit you more than once?” “No,” he replied. “Now,” said Mr Wilkins, “are you quite sure that Barber’s visit was within a fortnight after Fletcher’s?” “Yes,” replied Hyatt, “of that I am quite certain.” “Recollect yourself,” said Mr Wilkins, “you say Mr. Barber was never at your house but once - you are quite sure that it was not in October?” “Yes,” said Hyatt, “I am positive of that.” Mr Wilkins then returned him the bill saying, “Look at the date of that!” It was dated *the 13th day of October, 1840, the very day recorded in my diary, and four months after the time* so pertinaciously sworn to by this obstinate witness.\*

\* Hyatt’s tavern bill came with startling effect even upon the prosecutors, who, although they had spent several days in examining the whole of my papers (as well private as professional) had either overlooked this small scrap, or failed to notice its bearing on the case. It was a piece of evidence strongly illustrative of the vital importance to an accused person, especially in the case of a solicitor, of having complete access to all his papers. Yet, I am called upon to acquit myself of an imputed guilty participation in a crime of which I have been already acquitted by a jury, and when it is known that nearly the whole of my books and papers are scattered and lost.

The testimony of Hyatt was the chief, I may almost say the *only* piece of evidence upon which the prosecutors relied - certain I am it is that which most prejudiced the public against me, and a member of the jury on the trial of Slack’s case has since assured me, that though it was no part of the evidence before then, it had been read in the police reports by several of the jury, and that it had seriously prejudiced their minds.

I must, however, I admit my belief to be, that this wrong headed and illiterate man had no intentional design to injure me. He spoke recklessly as to events which had occurred four years before, and with no other foundation than the words – *Clerk, Peckham, and Square*, he ignorantly fabricated “Clarence Peckham, Esquire!”

#### EXTRACT 16<sup>124</sup>

[Page 27]

The order of events was as follows - I returned to London, and on the *22nd of October* the transfer of the stock was completed. The assistance of Messrs. Pickering and Co. was not necessary to the business of this transfer, - the only object of the application to them on the 31st was to obtain the trifle of wages, if any, and the clothes of the deceased, for which aught I knew might have been exhausted in the expenses of the funeral. I did not know that the administratrix had abandoned her claim. As far as I was professionally concerned it dropped on my reporting to her that the claim appeared too insignificant to warrant legal expenses.

I venture confidently to submit, whether the fact of my persistence in the application to Messrs. Pickering and Co. *after the fraud had been completed*, and after the money, *as I by letter expressly acquainted them*, had been realised, is not evidence of my entire confidence in the *bona fide* rights of my client.

#### EXTRACT 17<sup>125</sup>

[Page 28]

\* Trifling differences in name are by means uncommon in baptismal and other certificates of some years’ back-date. A gentleman in court when this judgment was read, informed me that he had

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<sup>124</sup> See paragraphs 31-32 in the judgment, Appendix 50.

<sup>125</sup> See paragraphs 33-38 in the judgment, Appendix 50.

recently had occasion to search the parish registry of Cupar Angus, Perthshire for the baptism or entry of one named in an English marriage certificate “*Moore*,” but that in entries in the Scottish register, having reference to several children of the same parents, he found the name variously spelt, - Muir, Mure, Muire, and that only the custom of recording the maiden name of the mother enabled him to trace the identity. [The corresponding \* is after a sidenote - Reason alleged\* - which seems to refer to the text in the judgment about Janet in Scotland being Jane in England.]

[Page 29]

The baptismal certificates filed as those of the deceased and his supposed sister, stated them to be the children of Robert and Jane Stewart, - the legitimacy was shown by a Scotch certificate of the marriage of Robert and Janet Stuart (the alleged parents). The authorities at the Bank appear to have understood that Janet in Scotland was generally rendered Jane in England. Had I known it, I should certainly have disapproved of any request being made to the session clerk to alter the certificate even by a single letter, but I never knew anything of this correspondence, - it is probable that the letter was inadvertently handed to me by Fletcher, with the other papers, when this business was over.

[Page 30]

The identity of the administratrix had been abundantly proved by Griffin before I was employed. Had she shown me the letter of M’Pherson to her, it is probable I might not, without further inquiry, have been satisfied with the explanation given as to the difference in spelling the name in the two countries, although her advanced years, herself- possession, her respectable appearance and demeanour, and her infirmity, were of all things calculated to disarm suspicion. She died, as was proved at the trial, shortly after, and I can hardly call her image to mind now without a feeling of wonder, that tottering age could so carry fraud and forgery to the brink of the grave.

With regard to the proceeds derived from the frauds, accompanying circumstances concur in each case to corroborate the truth of Fletcher’s and Sanders’ separate but confirmatory statements, that I had no participation in them.

The amount obtained by Stewart’s fraud was Christmas	£1,300
deposed (I quote from a print of the shorthand writer’s notes	
before the Judges) that Fletcher paid him	£100
The proctor say he received from Fletcher for probate duty	£45

Fletcher paid, besides the proctor’s charges and my charges, his own expenses, including certificates and journeys, so that the entire payments would barely leave £1000. From the confession of Mrs. Dorey, put in evidence by the prosecution, it would certainly appear that the clear net gain from this fraud was divided into equal shares between himself and his accomplice, the aged mother of Mrs. Dorey, the supposed sister of Stewart, and if this be so, where was my inducement to engage in a crime of such enormity and peril?

Mrs Dorey’s evidence is – “Fletcher gave my mother between £400 and £500 for her trouble.”

“In Stewart’s business I gave to Mr. Griffin (*the bondsman and the witness to the identity of the sham administratrix*) ten sovereigns. I took them to his lodgings in Duke-street and gave them into his own hand, five from Fletcher and five from my mother.” – See *printed Sessional Report of Trials*, p.811

EXTRACT 18<sup>126</sup>

[Page 31]

The judgment decides that the omission to pay the legacy duty, would, if proved, have been no reason for refusing the certificate, but at this stage of the observations, I must entreat the attention of the reader to the evidence by which this alleged neglect on my part to pay the duty is sustained, it has a most important bearing upon the great issue of my cause, - my guilt or innocence.

The Court observes, "Mr. Barber did not pay the duty although it is sworn that money was given to him for that purpose." This is not the case [-] the only statement that I had the money is to be found in a letter written by Fletcher to me, produced at the instance of the Law Society. As the Court assumed the evidence of the payment to be the sworn testimony of some witness, I have just reason to suppose that the real groundwork of the charge, Fletcher's letter, has been overlooked. The letter is dated 20th July 1842 [-] it will be found printed in order of time at page 43 and is important, as showing how completely Fletcher had succeeded in deceiving me up to the date at which this letter was written.

[ends]

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<sup>126</sup> See paragraph 39 in the judgment, Appendix 50.



## Appendix 57 Petition to House of Commons, on Home Office File

[Date stamped by the Home Office 23 March 1858]<sup>127</sup>

The proceeding on this Petition was deferred in consequence of an inquiry pending in the Court of Queen's Bench which has only recently concluded.

PETITION OF WILLIAM HENRY BARBER.

~~[Presented to the House of Commons by MR. WILSON PATTEN, 5th April, and printed by order of Committee on Petitions with 19th Report, sent to each Member 21st of April, 1852.]~~

~~App. 447. Mr. Wilson Patten. Sig. 1.~~

2067. The Petition of William Henry Barber, of No. 25, Surrey Street, Strand, in the County of Middlesex, Attorney and Solicitor,  
Humbly sheweth,

1. That in the year one thousand eight hundred and forty-three, and for seven years previously, your Petitioner was a solicitor in large and respectable practice, enjoying the confidence of his clients, and an unblemished reputation.
2. That prior to his admission as an attorney, your Petitioner had served from the year one thousand eight hundred and nineteen to the year one thousand eight hundred and thirty-six, nearly seventeen years, as clerk in the office of Messieurs Scoones, of Tonbridge, the eminent solicitors, to whom he was articled; and that the senior partner of that firm has testified on oath to the exemplary conduct of your Petitioner during the whole of that period.
3. That in the month of December, one thousand eight hundred and forty-three, your Petitioner was apprehended and committed to prison, and in the following April was indicted, as hereinafter more particularly stated, on the prosecution of the Lords Commissioners of her Majesty's Treasury for certain forgeries, to which your Petitioner was alleged to have been a guilty party, in connection with matters of business in which your Petitioner had been professionally employed.
4. That four bills of indictment were preferred against your Petitioner, all being for alleged offences of a similar character; that is to say, for having, in his capacity of solicitor, assisted in procuring probate of certain wills and other instruments, which eventually proved to have been forged by or at the instigation of one Joshua Fletcher, a retired surgeon of independent fortune, who had been a client of your Petitioner for five years immediately previous to your Petitioner's apprehension, and by whom your Petitioner had been retained, among many other matters of business, to assist in discovering the owners of unclaimed dividends, and to obtain the re-transfer from the Bank of England, to the parties supposed to be entitled under such wills or instruments, of certain funds which had been transferred for want of claim to the Commissioners for the Reduction of the National Debt.
5. That before the introduction, in the year one thousand eight hundred and thirty-nine, of Joshua Fletcher to your Petitioner, he (Fletcher) had been for ten years engaged in various bank frauds, as stated in the confession of William Sanders, an accomplice, recorded in the convict register at Hobart Town.

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<sup>127</sup> HO344-353.

6. That the particulars of these frauds have not come to the knowledge of your Petitioner, with the exception of a case which, after the apprehension of your Petitioner, was made public, and wherein it appeared that Fletcher and an accomplice, falsely personating the representative of one Mary Hunt, had obtained £4,250. In this fraud Fletcher was assisted by a solicitor of many years' professional experience, whose integrity has never been called in question, and there is no reason to doubt that this gentleman was (in the same manner as subsequently your Petitioner was) deceived by the consummate artifice of Fletcher, the originator of the frauds.

7. That your Petitioner was employed by Fletcher in nine cases to recover stock and unclaimed dividends which had been transferred to the Commissioners for the Reduction of the National Debt; that in all these cases the parties were introduced to your petitioner as the true owners, and nothing occurred to excite your Petitioner's suspicions to the contrary; and, in point of fact, it has since appeared that in five of such cases the parties receiving the money were the true owners; and, although in the remaining four cases it afterwards appeared that accomplices of Fletcher personated the supposed legatees, and fraudulently obtained the fund, yet your Petitioner had no reason at the time to suspect that those parties were other than the real owners, and nothing had come under your Petitioner's observation to lead to the belief that they were in the habit of acting with Fletcher, or were in concert with him.

8. That the duties required of your Petitioner were identical in the fraudulent and bona fide cases, which Fletcher had artfully interwoven with each other, and which were not distinguishable by any facts within the knowledge of your Petitioner.

9. That upon the first of the four charges previously referred to, your Petitioner was tried and acquitted, and in the two next in order of date the prosecutors refused to call evidence, although urgently pressed by your Petitioner's counsel to do so, and your Petitioner was therefore in effect acquitted in these two cases also.

10. That on the fourth of the said charges your Petitioner was tried jointly with Joshua Fletcher and other persons; and your Petitioner, though entirely guiltless of this as of all the other offences charged, having failed (through the disadvantages to which he was exposed in his defence, as presently to be mentioned) to convince the jury of his innocence, was convicted.

11. That, prior to the commencement of his trial, your Petitioner, by and under the advice of his counsel, applied for a separate trial, in order that he might tender as witnesses for examination the other prisoners indicted jointly with him ; but, the application being opposed by the prosecutors, it was not granted, and your Petitioner was consequently shut out from evidence most material to his defence, and was also greatly prejudiced by the non-production for examination of a most important witness, subpoenaed by the prosecutors, and whose attendance in the neighbourhood of the court was known to them, but who could not be found by your Petitioner or his solicitor, notwithstanding the most active and diligent efforts were made on behalf of your Petitioner to discover and produce such witness for examination.

12. That upon being so convicted, your Petitioner was for life. sentenced to be transported for life; and in pursuance of such sentence, he was sent to Norfolk Island, where he was detained a prisoner for two years and four months.

13. That in each of the four cases of fraud Fletcher was aided by a different accomplice, and that Fletcher and all his accomplices who designed and executed the frauds, whose instructions your Petitioner received, and by whose evidence alone the presumption raised against him could be

completely rebutted, have, without concert with him, or with each other, and without a view to their own benefit, but, if anything, to their prejudice, at different times and under different circumstances, some before and others after the trial, exonerated your Petitioner from all guilty knowledge whatever.

14. That on these ~~facts~~, and ~~certain~~ other corroborative ~~statements~~ ~~facts~~ becoming known, some gentlemen, officers of the Government, residing at Norfolk Island, namely, the Reverend Thomas Beagly Naylor, chaplain and justice of the peace; John William Smith, esquire, assistant-commissary-general; Fielding Browne, esquire, judge of the Criminal Court; Colin Arrott Browning, esquire, M.D.; the Reverend Thomas Rogers, succeeding chaplain, and others, at different times voluntarily devoted themselves to a searching investigation into the facts connected with such frauds; and the said Joshua Fletcher being examined sometimes apart from, and sometimes confronted with, your Petitioner, a series of inquiries were made into every supposed circumstance of suspicion, which, for want of such direct testimony, had weighed against your Petitioner on the trial, and the result of such investigations, as stated in the words of a report thereon, disclosed “a mass of facts wholly incompatible with the guilt” of your Petitioner. - -

15. That the several reports and notes of examination, together with various certificates and corroborative statements, were ultimately forwarded to Sir George Grey, then the Secretary of State for the Home Department.

16. That upon a full consideration of these papers, and of all the documents in his possession, comprising very material circumstances which had transpired since the conviction, and upon a review of the facts proved at the trial, her Majesty's Secretary of State was pleased to advise her Majesty to grant to your Petitioner her Majesty's free pardon, and on transmitting such pardon, her Majesty's Secretary of State was pleased in writing to declare his belief that your Petitioner “was free from any guilty participation in the frauds of which he was made the instrument.”

17. That, since your Petitioner's return to this country, eight of the surviving members of the jury by whom he was convicted have reviewed the evidence adduced before them in connection with the additional facts which had subsequently transpired, and the result is embodied in a declaration signed by them, that if such facts had been presented to them at the trial, they have no doubt whatever that your Petitioner would have been acquitted.

18. That a period of five years elapsed between your Petitioner's apprehension and the receipt of his free pardon, in the course of which time he endured very aggravated misery and degradation; he was nearly four months in Giltspur-street, Compter and in the prison of Newgate, before his trial; he was afterwards sent in chains to Millbank prison, where he was kept in solitary confinement two months; and he was then conveyed in heavy chains to the convict ship, in which he endured all the wretchedness of a voyage of four months, associated day and night with two hundred of the worst criminals; and for two years and four months he was a prisoner in Norfolk Island, where the misery inseparable from convict slavery was in the case of your Petitioner bitterly aggravated by a systematic, invidious, and revolting cruelty.

19. That on your Petitioner's arrival at Norfolk Island, applications were made in the usual form by persons of respectability for his services as a clerk; but such applications were uniformly refused, and other prisoners, and some on their second transportation, were selected for these light duties, whilst your Petitioner was appointed to the filthy office of cleaning the prisoners' wards, and was kept at this labour, being the most disgusting that could be found, for sixteen months, with only casual intervals of sickness caused by the nature of the work.

20. That at the end of one year and four months, he was sent to work in the fields in one of the heaviest gangs, with a twice-transported felon for his overseer—a man notorious for his severity. In this position your Petitioner was compelled to perform the same tasks as men of far greater physical power, who had been used to severe labour all their lives: yet at this very time there were employed as clerks or schoolmasters, ~~or~~ and in other light occupations, at every station in the island, convicts who not only had been transported a second time and had arrived in the island more recently than your Petitioner, but many of whom had even been convicted of serious crimes in the island while undergoing their sentences.

21. That Fletcher, the author of the frauds, was exempted from severe labour, being employed as a medical dispenser, and was allowed a private apartment, superior rations, and superior bedding, besides possessing the occasional privilege of sending the prisoners located at his station to heavy work, light work, or no work at all, at his discretion; whilst your Petitioner was herded with hundreds of other convicts, sleeping in a barn crowded by nearly three hundred inmates, and moreover was obliged to watch and keep order in this dormitory by night, and to clean it by day.

22. That upon one occasion, when upon leaving the hospital, being barely convalescent, he had been ordered by Dr. Graham to ~~be employed in breaking stones,~~ stone breaking, as a task less severe and unwholesome than his ordinary employment, Major Childs, the civil commandant, seeing him so occupied, demanded of your Petitioner why he was not cleaning the ward, and insisted that he should immediately return to ~~his former duties~~ that duty.

23. That on the same day the commandant visited the ward to see that your Petitioner was so employed, and when your Petitioner respectfully explained his sickly state of health, arising ~~out of~~ from the loathsome nature of the duties, the commandant derided his complaint, and insisted that your Petitioner should continue the employment. That your Petitioner accordingly did so until, in two or three days, he again sunk under it, and was once more conveyed to the hospital dangerously ill.

24. That under these sufferings your Petitioner became dangerously ill, and Dr. Graham, the medical officer, attributed this illness to your Petitioner's disgusting and painful occupation, which was embittered by every aggravating circumstance, and he recommended the removal of your Petitioner to another part of the island, but this was refused in your Petitioner's case, though permitted in other instances, and the consequence was, after a partial recovery, a serious relapse.

25. That Dr. Graham thereupon entered a strong protest in the visiting book, and ordered your Petitioner back to the hospital, but still no alleviation in the duties of your Petitioner could be obtained until the chaplain, seeing the hardship and privation to which your Petitioner was subjected, kindly interposed, and supported the doctor's remonstrance, and represented that your Petitioner's life was endangered by the instructions which the commandant had given.

~~26.~~28.<sup>128</sup> That no complaint of insubordination or ill-conduct was ever preferred against your Petitioner by the authorities of the Island, and he uniformly submitted to and obeyed all commands, however irksome the tasks imposed upon him; and with the exception of what has been stated as to the commandant, and who never complained of the slightest misconduct of your Petitioner, he believes his general deportment obtained for him the sympathy and good opinion of all the officers in the island who had anything to do with your Petitioner. That on your Petitioner's ~~on~~ leaving the island he not only received the highest testimonials from almost every officer upon it, but also an official certificate from Mr. Price, the then and present civil

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<sup>128</sup> It seems that this paragraph was to be moved downwards to become 28 rather than 26.

commandant, that your Petitioner had in all things conformed to the regulations of the island during the whole period of his detention there.

27~~26~~. That when it became known that your Petitioner employed his few moments of leisure in preparing proofs of his innocence, to be submitted to her Majesty's Government, he was forbidden the use of writing materials, all his papers were seized, and amongst them some important corroborative and elucidatory documents which had never been returned to him.

28~~27~~. That letters in your Petitioner's behalf addressed to the late Right Honourable Sir Robert Peel and other distinguished Members of Parliament by the Rev. Mr. Naylor, the chaplain of the island, were suppressed, and never permitted to reach their destination.

[Insert 28 from above, formerly 26]

29. That copies, verified by affidavit, of all the documents before referred to, so far as they have been within the power of your Petitioner, are published in a pamphlet, entitled "The Case of Mr. W. H. Barber," to which your Petitioner begs respectfully to refer your Honourable House; and the facts are also further detailed in a pamphlet recently published by Sir George Stephen, entitled "The Royal Pardon Vindicated, in reference to the Claims of Mr. W. H. Barber on the Justice of the Country."

30. That at the period of his apprehension your Petitioner was in the enjoyment of a very extensive and improving practice as a solicitor, having upwards of one hundred clients, and his bills of costs for the previous year amounting to three thousand four hundred pounds.

31. That he possessed the lease of the house in which he carried on his business, and also a good law library, with office furniture and every other requisite for the efficient conduct of an extensive and lucrative ~~business~~ practice.

32. That he had likewise a private residence suitably furnished, with a valuable private library; and also had claims to a considerable amount on parties for book and other debts, which in consequence of his conviction have been lost to him by the operation of the Statute of Limitations.

33. That, after sustaining the losses, and enduring the miseries above set forth, and after his innocence had been acknowledged by his prosecutors, her Majesty's Government, ~~confirmed by the Jury's retraction of their verdict~~ and after receiving her Majesty's gracious pardon avowedly on ~~that the~~ ground of entire innocence, your Petitioner has returned to his country utterly destitute, his valuable professional practice, and every vestige of the property which belonged to him at the time of his apprehension, being all swept away, and he finds himself at the mercy of several former creditors, whose claims he will yet have to discharge; he has moreover lost ~~seven years of~~ the prime of his life, and his constitution has been seriously, and it is feared permanently, injured by the cruelties and privations to which he has been subjected.

34. That in addition to these calamities your Petitioner ~~is~~ ~~was for seven years after his return to England~~ prevented, by legal impediments arising out of his conviction, from earning an independent livelihood in the profession which he had practised with success for eight years, and his conduct in which was never impeached, except by the charges now acknowledged by his prosecutors, her Majesty's Government, to have been unfounded; ~~and although, after thirteen years of privation and suffering, your petitioner is, by the unanimous judgment of the Court of Queen's Bench, recently delivered in his favor, and once more free to resume the practice of his profession, he is not only destitute of all pecuniary means, but he has incurred serious liabilities to~~

printers, law stationers, and others in relieving himself from the disabilities resulting from an erroneous prosecution.

Your Petitioner therefore most humbly prays that your Honourable House will be pleased to ~~institute due inquiry into~~ consider his case and the circumstances now humbly presented, and to do your Petitioner such justice as may thereupon seem meet.

And your Petitioner will ever pray.

WILLIAM HENRY BARBER.

## Appendix 58 Chronology in *Burchard*

Date	Event	Comment
10 October 1823	Cessation of payment of dividends on £700 stock. <sup>129</sup>	
5 July 1824	Cessation of payment of dividends on the £300 stock. <sup>130</sup>	
14 October 1825	Date of fake Will.	
7 January 1834	Burchard's stock and dividends transferred to the Commissioners for the Reduction of the National Debt. <sup>131</sup>	
21 March 1841	False date of death of testatrix.	
9 June 1841	Barber and Elizabeth Burchard' attend on proctor Mr Cox with Will. She swears standard affidavit; estate under £2,000. <sup>132</sup>	He was paid £40, no date given.
10 June 1841	Barber writes a letter to 'Elizabeth Burchard' at 9 Great Russell Street. It is returned. <sup>133</sup>	
14 June 1841	Probate granted.	As endorsed on the Will at the National Archives.
19 June 1841	Bank authorises transfer of £700 stock to 'Elizabeth Burchard'.	
22 June 1841	Barber and 'Elizabeth Burchard' attend at Bank to effect the transfer of £700 stock, along with Charles Hill.  Hill sells the stock and hands Barber a cheque for £686. It is paid into his account (and withdrawn on 26 June, £300 in notes and £386 in gold). <sup>134</sup>  Cash paid out from Bank, £446 for unclaimed dividends.	

<sup>129</sup> *The Times* (1844) 'The Will Forgeries' 10 January.

<sup>130</sup> *The Times* (1844) 'The Will Forgeries' 17 February.

<sup>131</sup> *The Times* (1844) 'The Will Forgeries' 17 February.

<sup>132</sup> *The Times* (1844) 'The Will Forgeries' 10 January.

<sup>133</sup> *The Times* (1844) 'The Will Forgeries' 10 January.

<sup>134</sup> *The Times* (1844) 'The Will Forgeries' 10 January.

	<p>£100 in notes.</p> <p>£346 in gold and silver.</p> <p>£125 paid into Barber's bank account: £100 in notes, £25 in gold. Notes with same serial numbers as those paid out earlier in the day.<sup>135</sup></p>	Or £135 – inconsistency in press report.
6 July 1841	Bank authorises transfer of £300 stock to 'Elizabeth Burchard'. <sup>136</sup>	
20 July 1841	<p>Barber and 'Elizabeth Burchard' attend the Bank to effect the transfer of the £300 stock and collect £162 arrears of dividends.</p> <p>They then go to Charles Hill, for him to sell the £300 worth of stock: sold for £269. (She was the same woman who had sold £700 worth of stock through Hill). Gave William a cheque, but he said cash was wanted immediately and so Hill gave him a check on a different jobber – presumably 'William West' because a cheque from him was cashed later that day at another bank.</p>	

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<sup>135</sup> *The Times* (1844) 'The Will Forgeries' 17 February.

<sup>136</sup> *The Times* (1844) 'The Will Forgeries' 17 February.



## Appendix 59 Chronology in *Hunt*

Date	Event	Comment
18 October 1806	Burial of Mary Hunt of Queen's Square, Bristol.	She is the true owner of the stock (£1,210) and unclaimed dividends.
November 1806	Probate granted to Rev. Peter William Jolliffe and others.	Her Bank in Bristol fail to inform the executors of the stock.  Her bankers in London, Prescott Grote & Co continue to claim her dividends, and sent them to her Bristol bank.
14 November 1829	Forged Will of Mary Hunt of Spring Street London.	
27 December 1829	Burial of Mary Hunt of Spring Street, London.	
1830	Mr Grote, who held the power of attorney, dies.	Claiming of dividends ceases.
5 January 1840	Mary's stock transferred to the Commissioners for Reduction of the National Debt.	
5 May 1842	Fletcher writes to Barber to tell him that the (unnamed) Thomas Hunt is coming to London.	Thomas Hunt is personated by William Sanders.
11 May 1842	Barber dictates Memorandum to Edmund Keene, clerk to Iggulden, Puckle & Puckle, explaining delay in seeking probate.	On this or perhaps a later date, Barber states that the estate will not exceed £2,000.
20 May 1842	Bircham takes a statement from 'Mary Howard,' unused.	
24 May 1842	Probate granted by Dr John Daubeney.	
27 May 1842	Bircham goes with 'Thomas Hunt' to inspect a birth	

	certificate in that name so that a copy can be verified by declaration.	
31 May 1842, Tuesday	Stock transferred to Thomas Hunt.	<i>Ex parte Jolliffe</i> [1845] EngR 320; (1844-1845) 8 Beav 168; 50 ER 66 (C). See also <i>Reports on Cases in the Law of Real Property and Conveyancing</i> (1846) vol. 1. London: J. Crockford, 217.
1 June 1842, Wednesday	<p>Dividends paid out to Thomas Hunt.</p> <p>Possibly the same day, about half the money changed into gold and the other half credited to Fletcher's bank account.</p>	<i>Ex parte Jolliffe</i> [1845] as above.

## Appendix 60 Chronology in London 19 April to 9 July 1844

Date	Event	Source (if necessary)
19 April 1844, Friday	Barber found guilty	
22 April 1844, Monday	Barber's unsworn address to the Court Sentence	<i>The Times</i> , 23 April 1844
26 April 1844	Wilkins's advertisement appears in <i>The Times</i> leading him to write to the editor.	
29 April 1844	Barber and Fletcher moved to Millbank Penitentiary	<i>The Times</i> 'Removal of convicts' 28 April 1844
29 April 1844	Wilkins writes to <i>The Times</i> , panicking about his advert.	<i>The Times</i> , 3 May 1844
29 April 1844	Josiah Dorey writes to <i>The Times</i> supporting Georgiana.	<i>The Times</i> , 30 April 1844
3 May 1844	<i>The Times</i> reports Lord Mayor etc and attendance of Mr Cope, Governor of Newgate regarding Fletcher and Georgiana incriminating Barber.	<i>The Times</i> , 'Police. Mansion House' 3 May 1844
11 May 1844	Report that Barber and Fletcher to be put aboard <i>Barossa</i> which will sail immediately – they were not.	<i>The Kentish Mercury and Greenwich Gazette</i> (1844) 'The Wills Forgery' 11 May
19 May 1844	Press report of Petition being prepared to the Queen with copy letter to those asked to sign, and extract. Sent 12 June – see below.	<i>Weekly Dispatch</i> (1844) 'The Convict Barber' 19 May  <i>The Weekly Dispatch</i> (1844) 'The Will Forgers. – the Full Confession of Mrs. Dorey' 19 May.
20 May 1844	<i>The Times</i> and <i>Morning Post</i> publish Georgiana's confession.	<i>The Times</i> (1844) 'The Will Forgers: Confession of Mrs. Dorey' 20 May.  <i>Morning Post</i> (1844) 'The Will Forgeries:

		Confession of Mrs. Dorey' 20 May.
21 May 1844	Barber's first petition, to Sir James Graham, Home secretary in Peel's second ministry (1841–46). <sup>137</sup>	HO9-51.
24 May 1844	Barber's Supplement to his first petition.	So described in the letter from the prison Inspectors, below.
25 May 1844	Inspectors of Millbank Prison send Barber's petition to the Home Office.	HO6
25 May 1844	Letter from Freshfields asking to see Petition – referring to information held about Barber.	HO146 et seq.
27 May 1844	HM Treasury forward the Freshfields letter to the Home Office.	HO150
27 May 1844	Prison inspectors write to Home Office with Barber's 'Supplement'.	HO156
30 May 1844	T E Bramall writes to Home Secretary informing him of the petition being prepared and asking him to see Wilkins and other gentlemen.	HO142-4.
12 June 1844	Bramall writes to Home Secretary with petition of 'nearly without exception total strangers to Mr Barber'.	HO91, the petition itself is at HO362.
28 June 1844, Friday	Barber and Fletcher taken to <i>Agincourt</i> at Woolwich.	<i>The Sun</i> (1844) 'The Wills Forgery Cases' 9 July.
28 June 1844	Fletcher's first Declaration (handwritten). Written by Barber.	HO138.
29 June 1844, Saturday	Peckham sends Petition attaching Fletcher's Declaration – addressed To the Honourable Members of the House of Commons.  Peckham visited Barber and Fletcher on the <i>Agincourt</i> 'yesterday' when Fletcher confirmed (and then signed).	HO139 Date stated in <i>The Sun</i> (1844) 'The Wills Forgery Cases' 9 July: 'on Saturday'.  HO141

<sup>137</sup> <https://www.britannica.com/biography/Sir-James-Robert-George-Graham-2nd-Baronet>

	Home Office file shows backsheet – ‘Petition to postpone Departure of Convict’ and ‘Ans’d 8 July 1844’	
1 July 1844, Monday	<i>The Times</i> publishes Fletcher’s Declaration.  Article erroneously describes the convict witness Cuttress as an officer of the ship.	<i>The Times</i> (1844) ‘The Convicts Barber and Fletcher’ 1 July.
2 July 1844, Tuesday	Fletcher’s second Declaration, handwritten - by McCallum (convict), witnessed by Charles Henry Fuller, R.N. Surgeon-Superintendent.  <i>Agincourt</i> due to sail.	HO1-2  <i>The Times</i> (1844) ‘The Convicts Barber and Fletcher’ 1 July. See also <i>The Sun</i> (1844) ‘The Wills Forgery Cases’ 9 July.
4 July 1844	<i>The Times</i> publishes Fletcher’s second Declaration.	<i>The Times</i> (1844) ‘The Late Will Forgery Case’ 4 July.
5 July 1844, Friday	Letter from Barber to Freshfields from <i>Agincourt</i>	HO132.
6 July 1844, Saturday	Freshfields pass on to Sir James Graham, Home Secretary, and say its ‘contents do not alter our view of the case ...’	HO136.
6 July 1844, Saturday	<i>Agincourt</i> leaves Woolwich.	
9 July 1844, Tuesday	William Sanders’s first Declaration	HO295  <i>The Sun</i> (1844) ‘The Wills Forgery Cases’ 9 July.

## Appendix 61 Chronology of Legal Processes

Date	Legal process	Other/comment
15 November 1843	Barber visited by James Freshfield.	
9 December 1843	Barber arrested by Daniel Forrester.	
9 December 1843	Barber appears at Mansion House and calls Fletcher as a witness. Fletcher arrested.	Evidence in <i>Slack</i> presented.
16 December 1843	Barber and Fletcher appear at Mansion House.	Further evidence in <i>Slack</i> presented.
28 December 1843	Barber and Fletcher appear at Mansion House.	Evidence in <i>Hunt</i> presented.
9 January 1844	Barber and Fletcher appear at Mansion House.	Evidence in <i>Slack</i> and <i>Burchard</i> presented.
10 January 1844	Dorey arrested.	
12 January 1844	Dorey appears at Mansion House.	
17 January 1844	Mr Humphrey for Fletcher applies for copies of the depositions. Refused.	
22 January 1844	Barber, Fletcher and Dorey appear at Mansion House.	Evidence in <i>Stewart</i> , <i>Burchard</i> and <i>Slack</i> presented.
26 January 1844	Barber, Fletcher, Dorey and Griffin appear at Mansion House.	Last hearing at which Montague Chambers represents William.  Evidence in <i>Stewart</i> , presented, plus general evidence from the Cucksons.
2 February 1844	Barber, Fletcher, Dorey and Griffin appear at Mansion House.	John Humffreys Parry represents William.  Further evidence in <i>Slack</i> .
16 February 1844	Barber, Fletcher, Dorey and Griffin appear at Mansion House.	Further evidence in <i>Burchard</i> .

1 March 1844	Barber, Fletcher, Dorey and Griffin appear at Mansion House.	Further evidence in all four cases.
13 March 1844	William Sanders caught in Edinburgh.	
18 March 1844	William Sanders appears at Mansion House.	
19 March 1844	Lydia Sanders caught in Edinburgh.	
23 March 1844	Barber, Fletcher, Dorey, Griffin and William Sanders appear at Mansion House.	Lydia Sanders too unwell to make last part of journey from Edinburgh to London.  Mostly procedural.
25 March 1844	Lydia Sanders appears at Mansion House.	Brief evidence of her involvement in <i>Slack</i> .
30 March 1844	Barber, Fletcher, Dorey, Griffin, William Sanders and Lydia Sanders appear at Mansion House.	Committed to the Old Bailey for trial.
10 April 1844, Wed	<b>Stewart trial begins</b> – application for separate trial.	Adjourned to following day because defence witness not available.
11 April 1844, Thu	Prosecution opens, witnesses called.	
12 April 1844, Fri	Rest of prosecution case, closed at end of day.	
13 April 1844, Sat	Wilkins speech; speeches for Fletcher and Dorey.	
15 April 1844, Mon	Judge's summing up in <i>Stewart</i> .  <b>The verdict.</b>	
16 April 1844, Tue	<b><i>Slack</i> trial begins.</b>	
17 April 1844, Wed	Prosecution case closes, with some straggling points dealt with the next morning.	
18 April 1844, Thu	Dorey changes plea to guilty.  Wilkins's speech, speeches for Lydia Sanders and Fletcher.	

	William Sanders found not guilty. No speech needed.	
19 April 1844, Fri	Prosecution closing speech Judge's summing up – Mr Justice Williams.  <b>The verdict</b>	
22 April 1844, Monday	William Sanders pleads guilty in <i>Hunt</i> .  William's unsworn oral statement.  Sentencing.	
Early May 1844		Publication of the speeches of Wilkins plus observations of a barrister (probably Parry).
21 May 1844		Barber's Petition to the Home Secretary, Sir James Graham.
29 April 1844		Barber and Fletcher transferred to Millbank.
9 July 1844		<i>Agin-court</i> departs.
10 or 14 December 1844		Barber's Memorial to Home Secretary, HO203-235, followed by enclosures. Sent in early March 1845.
12 November 1846	Conditional pardon.	Barber did not hear of it until March or early April 1847.
1847		Pamphlet, including observations of Archibald Michie, HO267-322.
3 November 1848	Free pardon.	
January 1849	Barber applies for his practising certificate.	
25 January 1849	Law Society Council decides to oppose his application.	
31 January 1849	Court orders report from Master Turner.	Mis-dated by Polden as 31 January 1850.



1849		Another edition of the Pamphlet, 1849 rough proof. It includes Barber's Introduction dated 26 December 1848 (later editions dating it to 1 January 1849).
28 January 1850	Hearing of application for certificate to practise begins.	Judges - Patteson, W.T. Coleridge, and Wightman.  Barber: Wilkins and Robert Lush, solicitor Mr Stevenson of Stevenson and Pollock.  Law Society – [Sir] Wilfred Thesiger QC and William Bovill.  After two days, adjourned.
9 May 1850	Hearing of application for certificate to practise resumes.	
6 July 1850	Judgment given by Patteson J in application for certificate to practise – refused.	
November 1850	Renewed application for certificate to practise.	
5 May 1851	Hearing of renewed application.	Barber represented by J.A. Roebuck QC.
4 June 1851	Judgment of Lord Chief Justice Campbell - application refused.	Lord Campbell says it is a final hearing – Sir John Romilly M.R. in Chancery was later to disagree.
April 1852	Barber petitions Parliament for compensation.	
1 July 1854	Hearing of Barber's application to the Court of Chancery for certificate to practise.	Sir John Romilly M.R.  Barber: Roundell Palmer (later Lord Selbourne L.C.) and future county court judges R.G Welford and Francis Roxburgh.

		Law Society: Charles Selwyn, later Selwyn L.J.  Application not granted, but stood over.
Late 1854	Renewed application to Queen's Bench for certificate to practise.	
17 April 1855	Hearing in Queen's Bench.	Barber: Sir Fitzroy Kelly QC, Attorney-General (21 February 1858 – 11 June 1859) future Chief Baron, and Mr Macnamara.  <i>Ex parte</i> application – no representation for the Law Society.
1 May 1855	Judgment - Lord Campbell grants permission.	
9 and 11 June 1855	Full hearing of application before Lord Campbell, Coleridge, Erle, and Crompton.	Barber: Sir Fitzroy Kelly QC, Attorney-General (21 February 1858 – 11 June 1859) future Chief Baron, and Mr Macnamara.  Law Society – Sir Wilfred Thesiger QC and Mr Bovill.
21 November 1855	Judgment of Lord Campbell.	Application granted – Barber can practise again.
27 April 1858	Renewed Petition to Parliament.	
15 June 1858	J. Brady moves Parliament for a select committee inquiry.	Hansard <a href="#">COMMITTEE MOVED FOR. (Hansard, 15 June 1858) (parliament.uk)</a> <sup>138</sup>
29 June 1858	Select Committee takes evidence from Barber.	
6 July 1858	Select Committee takes evidence from Childs, Rogers and Smith.	
7 July 1858	Select Committee takes evidence from Barber - and Robert Peckham.	

<sup>138</sup> HC Deb 15 June 1858 vol 150 cc2114-8.

3 August 1859	Vote in Commons. <a href="#"><u>SUPPLY.—CIVIL SERVICE ESTIMATES. (Hansard, 3 August 1859) (parliament.uk)</u></a>	(21.) Motion made, and Question proposed,— That a sum, not exceeding £5,000, be granted to Her Majesty, as a donation to W. H. Barber, in consideration of the sufferings he has undergone, and of his distressed circumstances.
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## Appendix 62 Attacks on prosecution witnesses

Also on lawyers and judges for dishonesty or incompetence.

By William's team and some supporters such as Stephen and, much later, Polden.

Name	Attacked as dishonest?	Comment
James Freshfield	Yes	<p><u>Wilkins</u></p> <p>'He would say candidly that he did not believe Mr. Freshfield. He would say candidly that he conceived Mr. Freshfield had given evidence which was not creditable to himself, and the reproach of which would, he believed, attach to him as long as he might live.'<sup>139</sup></p>
Charles Kaye Freshfield	Yes	<p><u>Wilkins</u></p> <p>'Probate of the will must be left at the Bank of England to undergo the inspection of some of the best and ablest solicitors in the land. They, he believed, would sooner convict Barber than all the rest put together, from the <b>malignity and the acrimony</b> they had shown. ... all the bitterness which had been exhibited towards Mr. Barber in this case was designed, if they could succeed, to vindicate themselves with the public. Their conduct had been scandalously negligent, and had furnished facilities to somebody to commit depredations on the public purse. It was with them precisely as it was with others – that when <b>they themselves were chargeable with misconduct</b> and neglect, they attacked the instruments by whom their conduct was brought to light...' <sup>140</sup></p> <p><u>Barber</u></p> <p>'It was also urged against me that I did not produce my partner for examination, although the prosecutors well knew that I had made the utmost exertions to subpoena him without success, and it has lately come to light [i.e. in the 1850 correspondence] that he had purposely kept out of my reach, and that the prosecutors had him in the neighbourhood under their own control, and that they purposely withheld his evidence from the court.'<sup>141</sup></p>

<sup>139</sup> *The Times* (1844) 'The Will Forgeries' 19 April.

<sup>140</sup> *Morning Post* (1844) 'The Will Forgeries, Second Case' 19 April, paras 11-14.

<sup>141</sup> BB (1853, 9th ed.) 36 (17).

		<p><u>Polden</u></p> <p>‘he was unable to call Bircham because the prosecution, having decided that he was not a good witness for their side, had hidden him away.’<sup>142</sup></p>
William Erle QC	No – criticise implicitly, by attacking a prosecution decision.	<p><u>Barber</u></p> <p>‘It was also urged against me that I did not produce my partner for examination, although the prosecutors well knew that I had made the utmost exertions to subpoena him without success, and it has lately come to light [i.e. in the 1850 correspondence] that he had purposely kept out of my reach, and that the prosecutors had him in the neighbourhood under their own control, and that they purposely withheld his evidence from the court.’<sup>143</sup></p> <p>[Freshfields wrote in May 1850: ‘In the exercise of their discretion, the counsel for the prosecutors did not call Mr. Bircham as a witness, but we had served him with a subpoena to secure his attendance, and he attended in consequence, and would have been in court if Mr. Barber’s counsel had not required all the witnesses to be excluded during the proceedings.’<sup>144</sup></p> <p>William tried to back away from criticising Erle by coming up with a strange assertion that the QC was unaware that Bircham had been subpoenaed. This also turned the allegation back on Freshfields: ‘Had Mr Erle been one of the counsel who, knowing the value of Mr Bircham’s testimony to me, thought it discreet not call him as a witness for the prosecution, such a mistake could not have occurred. Thus, the solicitors for the Bank authorities, acting as the crown prosecutors, kept Mr. Bircham out of the witness-box, whilst they permitted his absence to be mentioned to my prejudice.]’<sup>145</sup></p>
Captain Foscett	Yes	<p><u>Barber</u></p> <p>‘The conduct of Capt. Foscett deserves a stronger term than negligence... Had he told me the truth which in a matter of business he was bound to have done, or, at least, if he had any objections to do so, he should rather</p>

<sup>142</sup> Polden (2009) 219.

<sup>143</sup> BB (1853, 9th ed.) 36 (17).

<sup>144</sup> *The Times* (1850) [Advertisement] ‘To the Editor of The Times’ 20 May.

<sup>145</sup> BB (1854) Elucidation of the Judgment, Introductory Chapter, 18x-19x.

		<p>have declined to answer, and not to have made so serious a misrepresentation ...<sup>146</sup></p> <p><u>Wilkins</u></p> <p>‘Captain Foskett complained that my client was not sufficiently explicit. Do you think, gentlemen, that such a complaint lies in Captain Foskett’s mouth? Was he explicit? Nay, more, did he not take pains to deceive? Did he not assert that which was palpably untrue?’<sup>147</sup> ‘From the beginning to the end of Barber’s acquaintance with Captain Foskett, it seems to have been the Captain’s object to blind and mislead.’<sup>148</sup></p> <p><u>Roebuck QC</u> (erroneously targeted at Ann)</p> <p>‘The learned counsel referred to the real Anne Slack’s absurd concealment of her age, and argued upon the misleading effect which that concealment was sure to have on the mind of any one. In addition to this there was her express denial of her having executed a power of attorney, when in truth she had executed such a document some years before. To her absurdity and untruth much of the mischief that followed was to be attributed.’<sup>149</sup></p>
Henry Hyatt	No	<p><u>Barber</u></p> <p>‘I would not have it supposed that I attribute to Mr. Hyatt any intention wilfully to misrepresent; but my readers will, I think, agree with Mr. Serjeant Wilkins, that a more wrong-headed man never came into a witness-box. The lamentable mistakes of which he was proved guilty, will, I hope, operate as a caution to him as well as others, when the lives or liberties of their fellow-creatures may depend on their statements. A candid avowal of an imperfect recollection of occurrences in which he had no personal interest, and which had happened four years previously, would have been more creditable to Mr. Hyatt, and more conducive to the ends of justice. I am afraid his vanity was a little excited with the idea of being an important witness in a Government prosecution, towards which, at the time, all eyes were directed.’<sup>150</sup></p>

<sup>146</sup> HO217, Memorial of December 1844 (later excised).

<sup>147</sup> Wilkins and Gregory (1844) 33.

<sup>148</sup> Wilkins and Gregory (1844) 43.

<sup>149</sup> *Evening Standard* (1851) ‘Ex parte Barber’ 6 May.

<sup>150</sup> BB (1853, 9<sup>th</sup> ed.) 25 (6)

		<p>‘I must, however, I admit my belief to be, that this wrong headed and illiterate man had no intentional design to injure me. He spoke recklessly as to events which had occurred four years before...’<sup>151</sup></p> <p><u>Wilkins</u></p> <p>‘that this Mr. Hyatt is about as wrong headed a man as ever came into the witness box, and, like all the wrongheads, you will not marvel, that he is obstinate in his error.’<sup>152</sup></p> <p>‘his story is a thing of shreds and patches, clumsily knit together, and in many parts of it either unintelligible or absurd.’<sup>153</sup> ...</p> <p>‘a bold man in his assertions, ... not remarkable for his acuteness. He was what many persons would call a ‘good witness,’ - and an obstinate fellow who came into the witness-box determined to adhere to every statement he made. This man deposed to facts in which it was impossible to contradict him, - to conversations which took place when no other person was by. Why, the greatest ass in the world might make a statement of this kind, and adhere to it with all the obstinacy of the animal to which he was compared. (A laugh.)’<sup>154</sup></p>
William Prue Jordan	No	<p><u>Barber</u></p> <p>‘The first person officially employed was Mr. Jordan, the local registrar: he records the death of a person, said to have died in his immediate locality, although no such place as that assigned, namely, “South Terrace, Pimlico,” was known; and, although the account given him of the death was extremely suspicious, nevertheless, when applied to some time afterwards for a certificate of the death, he gave it without hesitation.’<sup>155</sup></p> <p><u>Wilkins</u></p> <p>Mr Price [sic, Prew] Jordan, for registering the death of ‘Anne Slack’ despite being 49d by the unfamiliar addresses given to him by Joshua, a man ‘with whose negligence and carelessness Mr Barber may contrast</p>

<sup>151</sup> BB (1854) Elucidation of the Judgment, 27, footnote.

<sup>152</sup> Wilkins and Gregory (1844) 8.

<sup>153</sup> Wilkins and Gregory (1844) 17.

<sup>154</sup> *The Times* (1844) ‘The Will Forgeries’ 15 April.

<sup>155</sup> BB (1853, 9<sup>th</sup> ed.) 79 (60).

		his conduct with great advantage and credit to himself. <sup>156</sup>
John Padmore Noble	No	<u>Wilkins</u>  ‘who I think, should be dignified with the title of identifier-general of the Bank’, because his evidence was solid: ‘Such positiveness, I think, speaks much more for his courage than his discretion.’ <sup>157</sup>
Master Turner	No	<u>Wilkins</u>  In his submissions in 1850, Wilkins: ‘accused the Master of the Court of perverting facts, though not wilfully, in the report which he had laid before the Court, and was several times interrupted and corrected by the Master in the statements which he made in reference to it.’  Counsel for the Law Society commented: ‘He (Sir F. Thesiger) then complained of the attack which had been made on the Master for the manner in which he had performed his duty - a duty of a most painful nature, but which the Master had discharged in such a manner as to challenge any man to impugn either the purity or integrity of his judgement.’
Francis Smedley of Smedley & Rogers	Yes	<u>Wilkins</u>  ‘Mr. Smedley, <b>in his affidavit, pretended</b> that he had warned Mr. Barber of the impropriety of it, and that unless he desisted from such transactions in future, he (Mr. Barber) would get into 49.’ <sup>158</sup>  Wilkins described Mr Smedley’s evidence as that he had ‘remonstrated with Mr. Barber for adopting that mode of conducting business, and warned him that some day it would bring him into difficulty’. He then dismissed this as ‘pure fiction’... <sup>159</sup> ‘If Mr. Smedley’s statement was true, Satan himself could not have preached better than he had, nor could he have done worse than when he had the next moment held out a bribe to Mr. Barber to practise the contrary; and it was such a man who now came forward to break a bruised

<sup>156</sup> Wilkins and Gregory (1844) 44.

<sup>157</sup> Wilkins and Gregory (1844) 45.

<sup>158</sup> *The Times* (1850) ‘Law Report: Court of Queen’s Bench... In re Barber, an Attorney’ 10 May, Appendix 49, para 164.

<sup>159</sup> *Evening Standard* (1850) ‘Law Intelligence. In re Barber’ 30 January.



		reed, and to crush a man who had suffered more than anyone could conceive. <sup>160</sup>
Stidolph	Yes	<u>Wilkins</u>  ‘As to Steidolf’s [sic] statement about the premiums of insurance, the learned serjeant contended that it was not to be believed...’ <sup>161</sup>
The Council of the Law Society	Not quite	<u>Stephen</u>  ‘It was impossible for me, without being guilty of marked pusillanimity, to avoid strong comments on the conduct of the Law Society, of the Bank, of Mr. James Freshfield, of the general conduct of the prosecution, <sup>162</sup> and, by necessary implication, on far more important personages. <sup>163</sup> To affect ignorance of these remarks is impossible;’ <sup>164</sup>  <u>Polden</u>  ‘On 25 January, without inquiry and simply upon reading Barber’s affidavit in support, the council decided it should be opposed (Law Society Council Minutes, 1848–1852, p. 66). Even in the context outlined above, the council’s opposition to Barber, decided upon so precipitately and pursued so relentlessly, is suspicious.’ <sup>165</sup> And ‘six instances of alleged misconduct that the ILS had managed to dredge up. Three of them were in fact abandoned in argument – “very properly” said Patteson’. <sup>166</sup>
Mr Justice Williams	No	<u>Barber</u>  ‘I attribute this calamitous verdict to the peculiar and unilateral summing up of his Lordship ... The judge unfortunately took a view of my case which I cannot but feel was not justified by the entire evidence and submitted to the jury the arguments of the prosecutors counsel and almost totally omitted those of mine.’ <sup>167</sup>
Lord Campbell CJ	No	<u>Stephen</u> (when working with Barber):

<sup>160</sup> *The Times* (1850) ‘Court of Queen’s Bench... In re W.H. Barber, an Attorney’ 30 January. Appendix 49, para 83.

<sup>161</sup> *The Times* (1850) ‘Court of Queen’s Bench... In re W.H. Barber, an Attorney’ 30 January. Appendix 49, para 174.

<sup>162</sup> Which was by Charles Freshfield.

<sup>163</sup> Judges.

<sup>164</sup> Stephen (1852, 3<sup>rd</sup> edition) 42, footnote.

<sup>165</sup> Polden (2009) 223.

<sup>166</sup> Polden (2009) 225.

<sup>167</sup> HO37 and HO40.

		<ol style="list-style-type: none"> <li>1. ‘though Lord Campbell declared his entire concurrence in the former judgment, and avowed it in terms that imply a sort of obligation to vindicate it, or at least a knowledge that it had been impugned , he abstained altogether from noticing the arguments opposed to it;<sup>168</sup></li> <li>2. Lord Campbell has upheld the former judgment without even a superficial review of the evidence ...<sup>169</sup></li> <li>3. In an extended footnote, Stephen lambasts Patteson J and Lord Campbell, starting with ‘Lord Campbell does not profess, in his recent judgment, to go into any circumstances indicating suspicion in Mr. Barber's mind, or creating a just demand for suspicion. His Lordship rather seems to proceed on the hypothesis that he did suspect, and that it cannot be contended otherwise:- “ He must have been wilfully blind,” observes his Lordship. But this is evading and not grappling with the issue.’<sup>170</sup> He continues in this mode.</li> </ol>
Mr Justice Patteson (and arguably also Coleridge J and Wightman J).		<p><u>Polden</u></p> <p>‘the bench which heard the case was not of the strongest. Patteson, the senior judge, was old and deaf and himself close to retirement, and with him were J.T. Coleridge and Wightman’.<sup>171</sup></p>

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<sup>168</sup> Sir George Stephen (1852, 3<sup>rd</sup> edition) *The Royal Pardon Vindicated, in Reference to the Claims of Mr. W.H. Barber on the Justice of the Country*. London: John Crockford, page xi. [The Royal Pardon Vindicated, in a Review of the Case Between Mr. W.H. Barber and the Incorporated Law Society - Google Play](#)

<sup>169</sup> Stephen (1852, 3<sup>rd</sup> edition) 56

<sup>170</sup> Stephen (1852, 3<sup>rd</sup> edition) 92-94.

<sup>171</sup> Polden (2009) 224-225.

## Appendix 63 Example cross-examination of William Sanders

We must make some assumptions. The first is that Sanders gives evidence along the lines of his (later) declaration of 9 July 1844. The second is that he sticks to his belief in William's lack of guilty knowledge, perhaps by stating that Joshua mentioned it to him. We need also to assume that he had already pleaded guilty, as he did eventually, to his involvement in *Hunt*, or else he might have refused to answer questions that might incriminate him. The same could apply to questions about *Slack*. Indeed, overall, it seems very unlikely that Sanders would be prepared – on legal advice – to give evidence for William, but we will assume that this was overcome somehow. A conviction, on his guilty plea, in *Hunt* would remove the privilege against self-incrimination on that transaction.

The questioning below is a short imagining of what would likely be a much longer cross-examination. From what we know now, Sanders could have been challenged on many other points, such as:

- a. his lack of knowledge that William had kept his correspondence with Joshua off the *Slack* file;
- b. that William stated, unequivocally, in his Memorial from Norfolk Island of December 1844, that Joshua told him that she was 'living' at Abbots Langley, yet he wrote to Captain Foskett on the basis that she was dead;
- c. the wording of his declaration of 9 July 1844.

Nor is it fanciful to reflect on Sanders being asked about these points. Had he been available, or indeed had arrangements been made for him to attend the Select Committee hearings in 1858, he could well have been asked about these points. Of course, at those hearings, William relied upon both Joshua's and Sanders's declarations of his innocence.

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Q. In your experience, is Mr Fletcher a scrupulously honest man?

A. No, he is not.

Q. We know from Mr Barber's diary that in the case of *Slack*, he met Mr Fletcher at least thirteen or fourteen times. Were you present at any of these meetings?

A. No.

Q. Apart from when you were impersonating Thomas Hunt, how often have you met Mr Barber?

A. Never.

Q. So you have never spoken to him about his involvement in Mr Fletcher's activities?

A. No.

Q. You and Mr Fletcher established at Abbots Langley that Miss Slack was alive?

A. Yes.

- Q. Yet Mr Barber wrote to Captain Foscett on the basis that she was dead?
- A. So I have heard.
- Q. Can you explain that?
- A. No. Unless Mr Fletcher told him that she was dead.
- Q. If he lied, you mean?
- A. Well, yes.
- Q. Were you present when Mr Barber met Captain Foscett alone?
- A. No.
- Q. Were you present when Mr Barber met Captain Foscett and his solicitor?
- A. No.
- Q. On what basis did Mr Barber and Mr Fletcher claim to believe that Ann Slack was not the beneficiary?
- A. Well, Fletcher told me that her signature did not match the example at the Bank and she was understood to be too young to be the owner because the real beneficiary made a power of attorney at a time when Miss Slack would have been a minor.
- Q. Is that what Mr Barber told Captain Foscett through his solicitor?
- A. I imagine so.
- Q. You imagine. You do not know?
- A. No. I mean, yes, I don't know.
- Q. You have not seen Mr Barber's letter of 4 January 1843?

[Letter produced]

Dear Sirs,—

We beg to return Miss Slack's letter, and to state that we find the signatures do not correspond; and, consequently, we have arrived at the conclusion, that the identity cannot be supported. We trust you will be good enough to consider this negotiation confidential, and should our exertions to discover the right party prove successful, we shall not fail to communicate to you the result, for the satisfaction of the young lady and her friends.

BARBER and BIRCHAM

- A. No, I have not seen this before.
- Q. Does it mention Miss Slack's age?
- A. [Hesitation] No.
- Q. Mr Barber claims that Captain Foscett said her age was 27. Yes?
- A. Yes.

- Q. And that was very important, for the reasons you expressed a few moments ago?
- A. Yes.
- Q. Mr Barber met with Captain Foscett and his solicitor Mr Baxter but never with Miss Slack. Yes?
- A. As far as I know.
- Q. Quite. Did Mr Barber contact Miss Slack and ask her to confirm her age?
- A. I don't know.
- Q. Given the importance of her age, that would have been a sensible and simple thing to do? Write a short letter?
- A. Yes.
- Q. I can tell you that he did not. Does that change your view of his conduct?
- A. I don't know. Offhand ...
- Q. Very well. You said in your evidence that you had believed that Mr Barber in *Slack* Mr Barber did not receive anything other than his professional fees?
- A. Yes.
- Q. Are you an expert in the taxation of solicitors' costs?
- A. I do not understand the question.
- Q. Are you an expert in how much solicitors should be paid for the work they do?
- A. No.
- Q. Are you aware that Mr Barber did a great deal of work in *Slack*?
- A. Well, Mr Fletcher involved him from the October, I believe, and he ... yes, I believe he did.
- Q. That he travelled to Brighton in an attempt to meet with Captain Foscett?
- A. I have heard that, yes.
- Q. That he met on numerous occasions with Mr Fletcher and twice with Captain Foscett?
- A. Yes.
- Q. Did Mr Barber charge Mr Fletcher for this work, in addition to the £13 he purportedly charged Emma Slack?
- A. I don't know.
- [Objection from the defence:] My Lord, no such separate bill is in evidence. The witness is ...
- Q. I thank my learned friend. Indeed. No such bill. Mr Sanders, even though you are not an expert in solicitors' fees, £13 seems rather paltry for several months work?
- A. I would not know, sir. As you have said, I am no expert.

- Q. Did Mr Fletcher pass any money to Mr Barber directly, such as a share of the money in *Slack*?
- A. I don't know.
- Q. Yes. You do not. Yet in your evidence you firmly claimed that Mr Barber receive only his proper professional fees. If that is, or was, truly what you believed, you had no proper basis for that belief, did you?
- A. It was my understanding, sir. I am sorry if ...
- Q. Moving on, Mr Sanders, you said in your evidence Mr Barber was a stranger to you until introduced to him by Fletcher as Thomas Hunt, and that you neither saw him or had any subsequent communication with him until your first examination at the Mansion House. Yes?
- A. Yes.
- Q. So, it was in or shortly after May 1842 that you, as Thomas Hunt, first, and last, came across Mr Barber?
- A. Yes, if that is when the *Hunt* thing was.
- Q. It was. And then you were involved in the *Slack* case?
- A. Yes.
- Q. That was 1843?
- A. Yes.
- Q. The *Stewart* transaction was in 1840?
- A. So I have heard.
- Q. Did you ever see the correspondence passing between Mr Barber and the solicitors for Mr Stewart's former employer?
- A. No.
- Q. Were you aware that they objected most strenuously to the claim that Mr Stewart had a sister?
- A. Not until after Mr Barber had been arrested.
- Q. Did you ever see the questions that those solicitors gave to Mr Barber for the supposed sister to answer?
- A. No.
- Q. And so you were unaware that no answers to those question were ever supplied by Mr Barber?
- A. Yes.
- Q. Can Mr Fletcher keep a secret, act discreetly?
- A. Well, clearly...

Q. Indeed. Is it possible that someone in Mr Barber's position would insist to Mr Fletcher that he must never give an inkling to anyone of his guilty involvement?

A. Er, possible, yes.

Q. In fact, Mr Sanders, you have no idea at all whether Mr Barber knew or suspected that Mr Fletcher was up to no good, have you?

A. Well, that was what I believed.

Q. But we have seen that you had no proper basis for that belief, have we not?

A. It was what I believed.

Q. You have pleaded guilty in the *Hunt* case?

A. Yes.

Q. And so you are a dishonest criminal?

[No answer]

Mmm. Thank you, Mr Sanders.

## Appendix 64 Comparison of Wills of Burchard, Hunt and Slack

<i>Burchard</i>	<i>Hunt</i>	<i>Slack</i>
<p>In the Name of God Amen I Eliza Burchard spinster</p> <p>(1) formerly of Cooper Street Westminster in the county of Middlesex and late of Rostock Mecklenburgh [sic] in Germany but now of New Bond Street Bath in the county of Somerset being of sound mind and memory and understanding do make this my last Will and Testament [illegible] following I give and bequeath unto my niece Eliza Burchard who is now living with me the sum of</p> <p>(2) seven hundred pounds Stock in the three and a half per cents reduced annuities also three hundred pounds stock in the consolidated three per cent annuities both standing in my name in the Books of the Governor and Company of the Bank of England in London I also give devise and bequeath unto her my aforesaid niece</p> <p>(3) all my money securities for money goods chattels estate and effects of what nature or kind soever and wheresoever the same shall be situate at the time of my death and I do nominate</p>	<p>I Mary Hunt widow</p> <p>(1) formerly of Bristol and afterwards of Bath but of Spring Street London being of sound mind memory and understanding but in bad health do make this my last Will and Testament as follows whereas I am possessed of about</p> <p>(2) twelve hundred and ten pounds in the three per cent consolidated annuities in the Bank of England this I give devise and bequeath unto my beloved Grandson Thomas Hunt mariner</p> <p>(3) also all my money securities for money goods chattels estate and effects of every kind wheresoever the same shall be found at the time of my death and I also make and appoint my said Grandson Thomas Hunt</p>	<p>I, ANNE SLACK Spinster</p> <p>(1) formerly of Smith Street Chelsea but now of South Terrace Pimlico do make this my last Will and Testament as follows that is to say I give devise and bequeath unto my beloved Niece Emma Slack the sum of</p> <p>(2) three thousand five hundred pounds sterling in the three per cent consolidated annuities now standing in my name in the Books of the Bank of England and</p> <p>(3) also all my money and securities for money of what nature or kind soever and wheresoever the same shall be at the time of my death and I do appoint and constitute my said niece</p>



<p>and [illegible] and appoint my said niece</p> <p>(4) sole Executrix of this my last Will and Testament hereby revoking and making void all and every other will or wills at any time heretofore by me made and do declare this to be my last Will and Testament in witness whereof I the said Eliza Burchard have hereunto set my hand and seal this 14<sup>th</sup> day of October in the year of our Lord one thousand eight hundred and twenty five – ELIZA BURCHARD –</p> <p>signed and sealed by the above named Eliza Burchard the testatrix in the presence of us present at the same time who have hereunto subscribed our names as witnesses in the presence of the said Eliza Burchard and of each other –</p> <p>(5) Amelia Rieslie – W. Sanders</p>	<p>(4) sole executor of this my last Will and Testament hereby revoking and making void all and every other Will or Wills at any time heretofore made by me and do declare this to be my last Will and Testament in Witness whereof I the said Mary Hunt have hereto set my hand and seal this 14<sup>th</sup> day of November in the year of our Lord one thousand eight hundred and twenty nine. [Signed Mary Hunt]</p> <p>Signed and sealed by the above named Mary Hunt as and for her last Will and Testament in the presence of us who at her request and in her presence have subscribed our names as witnesses to the same.</p> <p>(5) Signed Jane Bate [?]. Signed Mary Howard.<sup>172</sup></p>	<p>(4) sole executrix of this my last Will and Testament hereby revoking and making void all and every other will or wills at any time heretofore made by me and do declare this to be my last Will and Testament In Witness whereof I the said Anne Slack have hereunto set my hand and seal this third day of June in the year of our Lord one thousand eight hundred and forty two –Anne Slack –</p> <p>Signed and sealed by the above named Anne Slack as and for her my last Will and Testament in the presence of us who at her request and in her presence have subscribed our names as witnesses thereto –</p> <p>(5) Jane Perkins — Willm Williams</p>
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<sup>172</sup> ‘Mary Howard’ was also the woman produced to identify ‘Thomas Hunt’: ‘a woman named “Howard” is introduced to Mr. Barber, also by Fletcher, and she testifies that she knew the deceased Mrs. Hunt, and that Hunt was her son, and, accordingly, declaration was made’ (Morning Advertiser (1850) ‘Court of Queen’s Bench ... The Case of Mr. Barber, Solicitor’ 30 January.) Another report includes: ‘a day or two afterwards produced one Mary Howard, who made a declaration of his identity. Mr. Barber, without any hesitation, took her statement for granted, and prepared the declaration, which was signed by him, upon which the money was paid over to Hunt.’ (*The Times* (1850) ‘Court of Queen’s Bench... In re W.H. Barber, an Attorney’ 30 January.) The declaration was drawn up by Barber & Bircham, and, according to Barber, by his partner. His counsel, Serjeant Wilkins told the Court: ‘a day or two afterwards, Hunt produced one Mary Howard, who made such a declaration; but the Master added, that he thought such a declaration must have been drawn by Mr. Barber, who, however, stated that it was drawn by his partner Mr. Bircham.’ (*The Times* (1850) ‘Court of Queen’s Bench... In re W.H. Barber, an Attorney’ 29 January.)

## Appendix 65 Fletcher letter to Launceston Examiner 4 Aug 1849

*Launceston Examiner of Saturday 4<sup>th</sup> of August Eighteen Forty Nine, page 5:*

‘TO THE EDITOR OF THE LAUNCESTON EXAMINER.

EXPARTE BARBER

SIR, - As you have thought proper to give insertion to the poison in this case, I presume you will not hesitate to allow me to apply the antidote. Barber is not satisfied with having unjustly caused me to be torn from a loving wife and family, and to be sent to perish in unmerited misery, but is doing all in his power to hold me up as a mark for public abhorrence and execration, entirely for the purpose of exciting public commiseration, that he may live at his ease by obtaining a copious subscription. The statement which he has thought proper to publish to the world respecting my having made a confession of his innocence, I solemnly declare is a most diabolical fraud and forgery. The first time I knew or heard of such a statement was by reading an account of it in a Hobart Town newspaper, and at a time too when he knew that I would not be allowed to reply to him. His account of his treatment which he received on Norfolk Island is without foundation. What rough treatment he met with more than another was brought on entirely by his own coxcomical and insolent conduct towards the commandant and officers of the island: for the truth of this statement I beg to refer to Major Childs. When Barber first arrived on Norfolk Island, Mr. Lloyd, the superintendent, wished to save him as much as lay in his power from hard labor, by placing him in the barracks as wardsman, in conjunction with another man named William Allen. Barber now began to show off by refusing to do his work (about two hours a-day, but on being threatened by punishment by his overseer, and finding it useless to persevere in such conduct, he thought it better to do a little. \* \* \* \* \*

That Barber did all in his power to induce me to make a false declaration of his innocence during his passage out to, and since his arrival on Norfolk Island, I will prove. He addressed me one day thus: “I intend to get my liberty if I can, as the evidence against me is circumstantial, against you it is otherwise, although I know that the *principal part* against you is false. It cannot do you any harm to make a statement that I am innocent, and if I obtain my liberty it will be a good speculation, and then I will do what I can for you. When he found that I really would not do so, he then said he hoped that I would not oppose him or make any statement against him that might injure him. This I promised to do. Some friends of Barber on Norfolk Island whom he had the good luck to persuade into the belief that he was innocent, hinted that I should be punished if I did not make a statement in favor of Barber! The answer I gave was, that as I could not conscientiously say anything in his favour, I would not say anything at all. My present situation prevents my entering into a longer detail; but I trust that the public will now plainly understand that Barber was the principal actor in all the circumstances which led me into my present unfortunate situation; and it is by the publicity given to his artful and most atrocious falsehoods against me, that he has gained his liberty. – I am, Sir, your obedient servant,

JOSHUA FLETCHER

54, Liverpool-street, Hobart Town

[There is a passage in the above letter, not connected with the vindication of the writer, but a charge of the grossest kind against Mr. Barber, which we could not publish unless substantiated in a court of justice. – ED. *LE*.]

## Appendix 66 Subscriptions in Hobart Town and Sydney

<b>Subscription raised in Hobart Town<sup>173</sup></b>	<b>£</b>	<b>Shillings</b>
His Excellency the Lieutenant-Governor Sir Wm. T. Denison	3	3
Charles Machlachlan, Esq., banker	5	
The Rev. T. Rogers, late chaplain at Norfolk Island	3	3
The Rev. J. L. Ison, Norfolk Island	2	2
The Rev. R. Elliot, Norfolk Island	2	2
The Venerable the Archdeacon of Tasman	1	1
His Honour Mr. Justice Montagu	2	2
A. O. Montagu, Esq., solicitor	1	1
C. Perry, Esq., solicitor, Crown prosecutor	2	2
Assistant Commissary-General J. W. Smith	2	2
The late Attorney-General, Edward Macdowall, Esq.	1	1
His Honour Fielding Browne, Esq., judge of assize of Norfolk Island	1	1
T. D. Chapman, Esq. J. P.	1	1
The Rural Dean	1	1
Rev. T. Lillie	1	1
Rev. Mr. Hesketh	1	1
Capt. Moriarty, her Majesty's Harbour Master	1	1
Captain Austin (of the ship Pestonjee Bomanjee...)	1	1
Henry Hopkins, Esq., J.P.	1	1
<b>TOTAL</b>	<b>32</b>	<b>27</b>
<b>27 guineas and £5</b>		
<b>Or £33.7s</b>		

<b>Subscription raised in Sydney<sup>174</sup></b>	<b>£</b>	<b>Shillings</b>
His Honour Sir Alfred Stephen, Chief Justice of NSW	2	2
His Honour Mr. Justice Dickinson	2	2
Ditto (second subscription)	3	3
His Honour Mr. Justice à Beckett	2	2
<b><u>Barristers and Solicitors.</u></b>		
Archibald Michie, Esq	5	
Ditto (further subscription)	2	2
W.C. Wentworth, Esq., M.L.C.	5	
W.A. Purefoy, Esq.	1	1
G.P.F Gregory, Esq., Prothonotary and Registrar of the Supreme Court	2	2
James Norton, Esq.	5	0

<sup>173</sup> BB (1853, 9<sup>th</sup> ed.) 43 (24).

<sup>174</sup> BB (1853, 9<sup>th</sup> ed.) 46-47 (27-28).

G.K.Holden, Esq.	5	0
W.G. McCarty, Esq.	1	1
Messrs. Allen and Son	5	0
R.J. Want, Esq	5	0
Messrs. Carr and Co.	5	0
J.F. Josephson, Esq.	5	0
A. Longmore, Esq .	1	1
J. Smith, Esq .	5	0
C.H. Chambers, Esq.	2	0
David Chambers, Esq.	2	2
Hugh Chambers Esq.	1	
G. Cooper Turner, Esq., Civil Crown Solicitor .	2	2
James Martin, Esq.	2	0
Messrs. Stenhouse & Hardy	2	0
William Thurlow, Esq	2	0
John Williams, Esq.	2	0
Edward Sandwell, Esq	2	2
J. Yeomans, Esq .	1	1
William Russell, Esq.	1	1
George Want, Esq .	1	1
MessrsWestmore & Daintry	1	1
Gilbert Wright Esq.	1	1
Thomas Icton, Esq.	1	1
Archibald Little, Esq.	1	1
David Bruce Hutchinson, Esq.	1	
John Gurnen, Esq.	2	2
Robert Johnson, Esq.	2	2
James Johnson, Esq.	1	1
John Ryan Brennan, Esq., City Coroner	1	1
G.R. Nichols, Esq.	2	0
John Dunsmure, Esq.	2	2
R.H. Way, Esq.	1	1
B.C. Rodd, Esq.	1	0
W. Carter, Esq., Registrar General	5	0
A.H. McCulloch, Esq	1	1
<b><u>The Clergy, Merchants, and other Gentlemen.</u></b>		
The Bishop of New South Wales	3	3
The Rev. W.H. Walsh	1	0
The Rev. J.Saunders	1	0
The Rev. Dr. Ross	1	0
The Hon. the Speaker of the Legislative Council	3	3
Chas. Cowper, Esq., M.L.C	1	1
Dr. A'Beckett	2	2

The Editors of the Sydney Morning Herald	2	2
Mr. Alderman McDermott	1	0
G. Nathan, Esq.	1	1
Clarke Irving, Esq.	1	0
William Walker, Esq.	5	0
Ditto (second subscription)	3	0
Wm. Walker, Jun., Esq.	2	0
J. J. Walker, Esq	2	0
Captain Moriarty, R.N.	1	0
Dr. Wallace	1	0
A Lady	3	3
Mrs. Reiby	1	0
Charles Windeyer, Esq., C.P.M	1	0
Arthur Savage, Esq., R.N.	1	1
John Morris, Esq.	1	1
J. McLaren, Esq	2	2
J. H. Challis, Esq	1	1
G. Rowley, Esq.	1	1
J. Chisholm, Esq	1	0
Wm. Fanning, Esq.	2	2
Lewis Samuel, Esq.	1	0
J. Chalder, Esq	1	1
Mr. Taunton	1	0
Mr. Thomas Trood	1	0
M. Penny, Esq	1	0
Mr. C. Newton	1	1
Mr. McEvoy	1	0
Mr. J. J. Cohen	1	1
Mr. Moses Joseph	1	0
Mr. John Brown	1	0
Mr. Isaac Titterton	1	0
Mr. W. Roberts	1	1
Mr. T. Woolley	2	2
Mr. White	0	10
Mr. C. Newton & Brother	1	0
Mr. Matthew Young	1	0
Mr. Andrew Melville	1	1
Mr. G. S. Hill	2	0
Mr. Thomas Stubbs	1	0
Mr. Williams	2	0
Messrs. Thompson and Co.	2	0
Equity	1	0
A Friend (by F. Mitchell, Esq.)	1	0

Mr. Ford (in books and stationery)	3	3
Mr. McCormick (in books)	1	0
Mr. T. H. Way	0	10
Mr. Richard Peek	1	0
H. H. Brown, Esq.	0	10
Mr. Ormsby	0	5
Mr. Jones	0	10
Messrs. Ray and Co	1	1
Mr. Roby	2	2
Michael Metcalf, Esq.	2	2
Messrs. Mitchell and Co.	1	0
Mr. S. Lyons	1	0
Mr. J. P. Robinson	1	0
Mr. T. Aspinwall	1	1
Mr. R. Porter	1	0
Mr. S. Peek	1	0
Mr. D. Jones	2	0
Mr. W. Deane	1	0
Mr. H. Dixon	2	0
L. Miles, Esq., J.P.	1	0
Mr. G. A. Lloyd	2	2
A Friend	1	1
A Friend in Need	2	0
Mr. G. Wilkie	1	0
Mr. S. H. Smith	1	0
Two Friends	1	0
Mr. George King	1	0
Mr. George Jarman	1	0
T. W. Smart, Esq.	1	1
Mr. Birnstingl	1	1
Mr. W. Knight	1	1
Mr. L. Coupland	1	1
Mr. Alexander Hart	1	1
Five Friends	1	5
Mr. W. Perry	1	0
Mr. Barrington		10
Mr. Jones		10
Mr. Thornton		10
Dr. McKellar		10
J. B. Metcalfe, Esq.		10
Captain Hanson		10
Mr. Kelly		10
Mr. Tucker		10

Mr. James Goldsmith	1	0
Mr. Peter Favenc <sup>175</sup>	1	1
Justice [sic]	5	0
Friends, per N. S. Wales Bank, after departure	5	0
	<b>£226</b>	<b>217s</b>
<b>TOTAL    £246 17s</b>		

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<sup>175</sup> Favenc was of Huguenot descent. He was born in Spitalfields, where the French refugees had mostly settled. He appears in various Australian newspapers. [Peter Favenc - Historical records and family trees - MyHeritage](#)

## Appendix 67 Joshua Fletcher's petition of 1851

To The Queen's Most Excellent Majesty

May it please your Majesty

The humble Petition of Joshua Fletcher

Dutifully sheweth

That petitioner was apprehended in December 1843 along with William Henry Barber and others in London on a charge of forgery.

That he was along with the other parties tried and convicted as an accessory, on the 23 of April 1844 and was sentenced with Barber to transportation for life

That they were sent out to Norfolk island in the Agincourt and arrived there on the 9th of November 1844

The Barber was an attorney at law of some standing whom petitioner had employed for about 5 years previously in matters relating to his property and they both adopted the occupation of seeking out and communicating with the owners of unclaimed property and public stock.

That in the course of such occupation many owners were put in possession of their undoubted but till then their dormant rights, and petitioner always advanced to Barber the funds necessary to prosecute and mature the claims in which they were jointly concerned to be repaid at all events when the claims were substantiated

That Barber acted as the solicitor and adviser in these transactions, and gave the directions, and made the suggestions as to the proper mode of proceeding and proofs and statements requisite; - and petitioner never moved or interfered with them without his direction or sanction

That petitioner was a retired surgeon in London with a moderate competency and employed his capital - partly through Barber's agency in loans and discounts where adequate inducements offered.

That petitioner solemnly declares that the part he took in prosecuting the claims which they negotiated was all at the instance of or approved by Barber, and as petitioner believed legally correct.

That petitioner never received a farthing of the produce of any of the transactions, but what he had advanced and interest on it

That notwithstanding property amounting to 2 or £3000 of petitioner was seized on his conviction and is still with held

That petitioner is now 58 years old, and in infirm and precarious health, after enduring the severities, privations and hardships attendant on transported convicts 2 Norfolk island and this colony.

That in petitioners case, the "convicted offender" has indeed been signally punished;- the law notoriously and fully vindicated, and society avenged.



That petitioners present position renders him almost useless to society; - his life almost burdensome; and is very existence, little short of a lingering death.

That during the passage from England, he was incessantly by Barber's emissaries importuned to assist in procuring a reversal of his sentence, which it was said he had means and influence to accomplish with petitioners aid

That petitioner stated his willingness to assist him if he could do so without compromising himself, and after some time a declaration was offered for his Signature stating, to the best of petitioner's recollection, that for anything petitioner personally knew to the contrary Barber was innocent of the imputed fraud and conspiracy with the parties named in it

that petitioner signed that declaration being totally ignorant of what occurred between him (Barber) and the claimant parties at their various conferences: - and petitioner at the same time engaged not to do any act to prejudice his application;- but petitioner has never signed any other, though he has been informed that others of a very different purport, have been exhibited, and statements made confirmatory of them.

That petitioner was treated at Norfolk Island like the other convicts, and subject to such hard labor as his physical ability would bear.

That he was attacked with dysentery, and was many ~~weeks~~ months so ill there, that he was given up by the medical officers.

That subsequently on his partial recovery he was ordered to attend to the dispensing of medicines prescribed by the medical officers at one of the stations on the Island.

That his various employments and state of health as well as his conduct both at Norfolk Island and since his removal will appear by reference to the official reports of the proper authorities.

That he has now undergone a period of more than 7 years of captivity severity and punishment since his apprehension without any offence against regulation or discipline: and all the other parties charged with the criminal acts which involved petitioners banishment are now, partly through your Majesty's clemency free.

Petitioner therefore humbly implores your Majesty to consider his case and circumstances and to grant him such a remission of his sentence or such other amelioration of his condition as to your majesty may seem meet and your Petitioner will ever pray [etc]

Hobart Town

Signed "Joshua Fletcher"

January 1851